

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MAY 13, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 29
 DEFENDANT.)
) PAGES 5563 - 5837

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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BY: MARIO C. SCUSSEL

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ADMINISTRATION
BY: GEORGE SCAVDIS

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SAN JOSE, CALIFORNIA

MAY 13, 2022

P R O C E E D I N G S

(COURT CONVENED AT 9:07 A.M.)

(JURY IN AT 9:07 A.M.)

THE COURT: THANK YOU. PLEASE BE SEATED.

ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

THE JURY AND ALTERNATES ARE PRESENT.

GOOD MORNING, LADIES AND GENTLEMEN. NICE TO SEE YOU AGAIN
ON THIS FRIDAY NEXT.

LET ME ASK YOU THAT QUESTION BEFORE WE BEGIN.

DURING THE BREAK, HAVE ANY OF YOU HAD CAUSE TO READ,
LEARN, DISCUSS, OR IN ANY WAY DO ANY INVESTIGATION ABOUT THIS
CASE?

IF SO, IF YOU WOULD PLEASE RAISE YOUR HAND.

I SEE NO HANDS.

THANK YOU FOR YOUR CONTINUED RECOGNITION OF THE
ADMONITION.

WE'RE GOING TO CONTINUE. I THINK MS. SAWYER IS ON THE
STAND, DR. SAWYER.

MS. WALSH, YOU'RE READY TO CROSS-EXAMINE AGAIN?

MS. WALSH: I AM, YOUR HONOR. THANK YOU.

THE COURT: GREAT. GREAT. LET'S BRING HER IN.

GOOD MORNING, DR. SAWYER.

PLEASE MAKE YOURSELF COMFORTABLE.

THE WITNESS: THANK YOU.

09:08AM 1 THE COURT: YOU CAN TAKE YOUR MASK OFF AGAIN IF YOU
09:08AM 2 WOULD LIKE.

09:08AM 3 THE WITNESS: THANK YOU.

09:08AM 4 THE COURT: AND WHEN YOU ARE COMFORTABLE, WOULD YOU
09:08AM 5 JUST STATE YOUR NAME AGAIN, PLEASE.

09:08AM 6 THE WITNESS: LYNETTE SAWYER.

09:08AM 7 THE COURT: THANK YOU. I'LL REMIND YOU, YOU'RE
09:08AM 8 STILL UNDER OATH.

09:08AM 9 **(GOVERNMENT'S WITNESS, LYNETTE SAWYER, WAS PREVIOUSLY**
09:09AM 10 **SWORN.)**

09:09AM 11 THE COURT: MS. WALSH.

09:09AM 12 MS. WALSH: THANK YOU, YOUR HONOR.

09:09AM 13 **CROSS-EXAMINATION (RESUMED)**

09:09AM 14 BY MS. WALSH:

09:09AM 15 Q. GOOD MORNING, DR. SAWYER.

09:09AM 16 A. GOOD MORNING.

09:09AM 17 Q. SO I WANTED TO ASK YOU SOME QUESTIONS ABOUT YOUR TESTIMONY
09:09AM 18 ON WEDNESDAY. AND I WANT TO START WITH YOUR UNDERSTANDING OF
09:09AM 19 THERANOS'S USE OF ITS OWN LDT'S.

09:09AM 20 YOU TESTIFIED ON DIRECT THAT YOU BELIEVED WHILE YOU WERE
09:09AM 21 WORKING AT THERANOS THAT THERANOS WAS RUNNING ALL OF ITS TESTS
09:09AM 22 ON COMMERCIALLY AVAILABLE FDA APPROVED DEVICES; IS THAT RIGHT?

09:09AM 23 A. ALL THE SOP'S I SAW AND REVIEWED WERE FOR COMMERCIAL
09:09AM 24 DEVICES WITH A COUPLE OF EXCEPTIONS, WHICH HAD TO DO WITH
09:09AM 25 BACTERIA IN STOOLS.

09:09AM 1 Q. SO WAS IT YOUR BELIEF WHILE YOU WERE WORKING THERE, THAT
09:10AM 2 THERANOS WAS RUNNING ALL OF ITS TESTS ON FDA APPROVED DEVICES?
09:10AM 3 A. YES, BECAUSE IF THEY WEREN'T, I SHOULD HAVE SEEN THE SOP'S
09:10AM 4 FOR SOMETHING ELSE.
09:10AM 5 Q. OKAY. AND YOU ALSO TESTIFIED THAT YOU HAD BEEN WORKING IN
09:10AM 6 THE LAB INDUSTRY FOR A FEW DECADES; RIGHT?
09:10AM 7 A. YEAH.
09:10AM 8 Q. OKAY. AND YOU UNDERSTOOD THAT THERANOS HAD DEVELOPED ITS
09:10AM 9 OWN TECHNOLOGY AT THE TIME; RIGHT?
09:10AM 10 A. NO. I UNDERSTOOD THAT THEY WERE DEVELOPING SOMETHING.
09:10AM 11 Q. OKAY.
09:10AM 12 A. I DIDN'T KNOW ITS STATUS.
09:10AM 13 Q. SO WERE YOU -- YOU WERE AWARE IN 2013 THERE WAS PUBLICITY
09:10AM 14 ABOUT THERANOS'S ROLLOUT IN WALGREENS OF ITS TESTING SERVICES?
09:10AM 15 A. VERY PERIPHERALLY.
09:10AM 16 Q. ALL RIGHT. LET'S, IF WE COULD, PULL UP WHAT IS ALREADY IN
09:10AM 17 EVIDENCE --
09:10AM 18 IF I COULD PUBLISH, YOUR HONOR, EXHIBIT 1113?
09:10AM 19 THE COURT: SURE.
09:10AM 20 AND, DR. SAWYER, IF YOU COULD JUST PULL THAT MICROPHONE A
09:11AM 21 LITTLE CLOSER TO YOU, THAT WOULD BE HELPFUL.
09:11AM 22 THE WITNESS: OKAY.
09:11AM 23 THE COURT: DOES IT MOVE? I THINK IT --
09:11AM 24 THE WITNESS: YEAH. I WAS JUST TRYING NOT TO HIT IT
09:11AM 25 WITH THE PAGES.

09:11AM 1 THE COURT: RIGHT. THERE IS THAT.

09:11AM 2 BY MS. WALSH:

09:11AM 3 Q. OKAY. SO LOOKING AT EXHIBIT 1113, THIS IS THE JOINT PRESS
09:11AM 4 RELEASE FOR THERANOS'S ROLLOUT IN WALGREENS.

09:11AM 5 DO YOU SEE THAT?

09:11AM 6 A. UH-HUH.

09:11AM 7 Q. AND THE TITLE OF THE PRESS RELEASE IS "THERANOS SELECTS
09:11AM 8 WALGREENS AS A LONG-TERM PARTNER THROUGH WHICH TO OFFER ITS NEW
09:11AM 9 CLINICAL LABORATORY SERVICE."

09:11AM 10 DO YOU SEE THAT?

09:11AM 11 A. YES.

09:11AM 12 Q. AND THE DATE OF THIS PRESS RELEASE IS SEPTEMBER 9TH, 2013;
09:11AM 13 RIGHT?

09:11AM 14 A. OKAY.

09:11AM 15 Q. AND I JUST WANT TO READ THE FIRST PARAGRAPH, WHICH STATES
09:11AM 16 THAT: "THERANOS AND WALGREENS TODAY ANNOUNCED A LONG-TERM
09:11AM 17 PARTNERSHIP TO BRING ACCESS TO THERANOS'S NEW LAB TESTING
09:11AM 18 SERVICE THROUGH WALGREENS PHARMACIES NATIONWIDE. AS THE
09:11AM 19 SERVICE BECOMES AVAILABLE THROUGH WALGREENS" -- SORRY --
09:12AM 20 "THROUGH THERANOS WELLNESS CENTERS INSIDE WALGREENS STORES,
09:12AM 21 CONSUMERS WILL BE ABLE TO ACCESS LESS INVASIVE AND MORE
09:12AM 22 AFFORDABLE CLINICIAN-DIRECTED LAB TESTING, FROM A BLOOD SAMPLE
09:12AM 23 AS SMALL AS A FEW DROPS, OR 1/1,000 THE SIZE OF A TYPICAL BLOOD
09:12AM 24 DRAW. THE SAMPLES ARE EITHER TAKEN FROM A TINY FINGERSTICK OR
09:12AM 25 A MICRO-SAMPLE TAKEN FROM TRADITIONAL METHODS."

09:12AM 1 SO MY QUESTION, DR. SAWYER, IS BEING IN THE LAB INDUSTRY

09:12AM 2 AT THE TIME, DO YOU REMEMBER SEEING THIS ANNOUNCEMENT?

09:12AM 3 A. NO.

09:12AM 4 Q. OKAY. WHEN YOU STARTED AT THERANOS, OR SHORTLY BEFORE YOU

09:12AM 5 STARTED AT THERANOS, DID YOU GO TO THERANOS'S WEBSITE AT THE

09:12AM 6 TIME?

09:12AM 7 A. NO, I DID NOT.

09:12AM 8 Q. OKAY. LET'S PULL UP EXHIBIT 5805, WHICH IS IN EVIDENCE.

09:12AM 9 THIS IS THERANOS'S WEBSITE.

09:12AM 10 AND I JUST WANT TO READ ON PAGE 1. "ONE TINY DROP CHANGES

09:13AM 11 EVERYTHING."

09:13AM 12 DO YOU SEE THAT?

09:13AM 13 A. I DO.

09:13AM 14 Q. "NOW FOR THE FIRST TIME, OUR HIGH COMPLEXITY

09:13AM 15 CLIA-CERTIFIED LABORATORY CAN PERFORM YOUR TESTS QUICKLY AND

09:13AM 16 ACCURATE ON SAMPLES AS SMALL AS A SINGLE DROP."

09:13AM 17 DO YOU SEE THAT?

09:13AM 18 A. I DO.

09:13AM 19 Q. AND THEN IF WE CAN FLIP TO PAGE 3 UNDER "A FEW DROPS IS

09:13AM 20 ALL IT TAKES."

09:13AM 21 IT SAYS, "THERANOS'S PATENTED TECHNOLOGY CAN ANALYZE

09:13AM 22 SAMPLES AS SMALL AS 1/1,000 THE SIZE OF A TYPICAL BLOOD DRAW."

09:13AM 23 DO YOU SEE THAT?

09:13AM 24 A. I DO.

09:13AM 25 Q. AND YOU DON'T HAVE ANY RECOLLECTION OF SEEING ANY OF THESE

09:13AM 1 STATEMENTS WHEN YOU STARTED WORKING AT THERANOS IN 2014?

09:13AM 2 A. NO, I DID NOT GO TO THEIR WEBSITE.

09:13AM 3 AS I SAID BEFORE, I WAS ANTICIPATING IT TO BE A TWO TO
09:13AM 4 THREE MONTH, VERY SHORT-TERM ASSIGNMENT.

09:13AM 5 Q. OKAY. AND EVEN THOUGH YOU DIDN'T GO TO THEIR WEBSITE, YOU
09:13AM 6 DIDN'T HEAR ABOUT THERANOS'S NEW TECHNOLOGY KIND OF IN THE NEWS
09:14AM 7 OR ANYTHING LIKE THAT?

09:14AM 8 A. I HEARD, I HEARD THE NAME. I KNEW THEY WERE DEVELOPING
09:14AM 9 NEW TECHNOLOGY.

09:14AM 10 I DIDN'T KNOW THE STATUS OF ITS ACTUAL USE.

09:14AM 11 Q. BUT YOU KNEW THEY WERE DEVELOPING NEW TECHNOLOGY?

09:14AM 12 A. UH-HUH.

09:14AM 13 Q. AND YOU KNEW THEY HAD A CLIA LAB?

09:14AM 14 A. YES, I DID.

09:14AM 15 Q. OKAY. BUT YOU DIDN'T SEE ANYTHING IN THE NEWS ABOUT THEM
09:14AM 16 USING THE NEW TECHNOLOGY IN THE CLIA LAB, IS THAT WHAT YOU'RE
09:14AM 17 SAYING?

09:14AM 18 A. CORRECT.

09:14AM 19 Q. OKAY. YOU ALSO TESTIFIED ON DIRECT THAT YOUR ONLY CONTACT
09:14AM 20 THAT YOU HAD IN THE -- FROM THE LAB WAS A PERSON NAMED
09:14AM 21 MICHELLE LEE; IS THAT RIGHT?

09:14AM 22 A. I BELIEVE THAT WAS HER NAME. MY RECOLLECTION IS THAT
09:14AM 23 THAT'S HER NAME. SOMETHING SIMILAR TO THAT AT LEAST.

09:14AM 24 Q. OKAY. COULD IT HAVE BEEN MOLLY LEE?

09:14AM 25 A. YES, IT COULD HAVE BEEN.

09:14AM 1 Q. OKAY. AND YOU SAID SHE WAS THE PERSON WHO SENT YOU THE
09:14AM 2 SOP'S TO SIGN; IS THAT RIGHT?

09:14AM 3 A. CORRECT.

09:14AM 4 Q. AND YOU ALSO TESTIFIED THAT YOU HAD NO CONTACT WITH THE
09:14AM 5 TECHNICAL SUPERVISOR IN THE LAB; RIGHT?

09:14AM 6 A. CORRECT.

09:14AM 7 Q. AND NO CONTACT WITH THE GENERAL SUPERVISOR IN THE LAB;
09:14AM 8 RIGHT?

09:15AM 9 A. CORRECT.

09:15AM 10 Q. BUT YOU DID REVIEW SOP'S; CORRECT?

09:15AM 11 A. I DID.

09:15AM 12 Q. OKAY. AND SO LET'S PULL SOME OF THE ONES THAT YOU DID
09:15AM 13 REVIEW THAT ARE IN EVIDENCE UP FOR YOU TO LOOK AT AGAIN.

09:15AM 14 AND WHY DON'T WE START WITH EXHIBIT 20575. AND IF WE CAN
09:15AM 15 LOOK AT THE FIRST PAGE OF THIS.

09:15AM 16 SO YOU SEE YOUR SIGNATURE, DR. SAWYER, AT THE BOTTOM;
09:15AM 17 CORRECT?

09:15AM 18 A. YES.

09:15AM 19 Q. AND IF WE GO UP, THE SIGNATURES AT THE BOTTOM, MR. ALLEN.
09:15AM 20 THE ONE ABOVE YOUR SIGNATURE IS GODFRED MASINDE, PH.D.

09:15AM 21 DO YOU SEE THAT?

09:15AM 22 A. I DO.

09:15AM 23 Q. AND HE WAS LISTED AS THE TECHNICAL SUPERVISOR; CORRECT?

09:15AM 24 A. ON THAT DOCUMENT, YES.

09:15AM 25 Q. RIGHT. THAT'S HIS TITLE IN THE DOCUMENT, RIGHT, THE

09:16AM 1 DOCUMENT YOU SIGNED?

09:16AM 2 A. YES.

09:16AM 3 Q. OKAY. AND SO YOU DIDN'T REACH OUT TO DR. MASINDE TO TALK
09:16AM 4 ABOUT THE LAB?

09:16AM 5 A. I DID NOT.

09:16AM 6 Q. OKAY. AND IF WE GO ONE UP.

09:16AM 7 LINA CASTRO, SHE'S LISTED AS THE CLINICAL LABORATORY
09:16AM 8 SCIENTIST.

09:16AM 9 DO YOU SEE THAT?

09:16AM 10 A. I DO.

09:16AM 11 Q. AND I TAKE IT YOU DID NOT REACH OUT TO HER EITHER; RIGHT?

09:16AM 12 A. I DID NOT.

09:16AM 13 Q. AND THEN THE NEXT ONE IS LINDSAY MARSH.

09:16AM 14 DO YOU SEE THAT?

09:16AM 15 A. UH-HUH, I DO.

09:16AM 16 Q. AND HER TITLE IS CLINICAL LABORATORY ASSOCIATE; CORRECT?

09:16AM 17 A. YES.

09:16AM 18 Q. AND YOU DID NOT REACH OUT TO THAT PERSON TO TALK ABOUT THE
09:16AM 19 LAB EITHER; RIGHT?

09:16AM 20 A. I DID NOT.

09:16AM 21 Q. OKAY. LET'S NOW PULL UP 10526, WHICH IS ANOTHER SOP THAT
09:16AM 22 YOU SIGNED IN EVIDENCE.

09:16AM 23 AGAIN, I JUST POINT YOU TO GODFRED MASINDE.

09:16AM 24 DO YOU SEE THAT?

09:16AM 25 A. UH-HUH, I DO.

09:16AM 1 Q. AND HE'S THE TECHNICAL SUPERVISOR.

09:17AM 2 AND THEN THERE ARE SOME OTHER NAMES ON THE SOP THAT IS

09:17AM 3 SIGNED; RIGHT?

09:17AM 4 A. YES.

09:17AM 5 Q. AND YOU DIDN'T REACH OUT TO ANY OF THOSE PEOPLE; RIGHT?

09:17AM 6 A. NO, I DID NOT.

09:17AM 7 Q. OKAY. AND IF YOU CAN TURN IN YOUR BINDER TO 20033.

09:17AM 8 DO YOU HAVE THAT DOCUMENT IN FRONT OF YOU?

09:17AM 9 A. YES, I DO.

09:17AM 10 Q. AND THIS IS ANOTHER STANDARD OPERATING PROCEDURE; RIGHT?

09:17AM 11 A. YES, IT IS.

09:17AM 12 Q. AND THE EFFECTIVE DATE IS 12-2-2014; CORRECT?

09:17AM 13 A. HUH --

09:17AM 14 Q. ON THE TOP?

09:17AM 15 A. THAT IS A DATE THAT THEY WERE SIGNED.

09:17AM 16 TECHNICALLY, ACTUALLY IT'S NOT EFFECTIVE UNTIL I SIGN IT.

09:18AM 17 Q. OKAY. AND YOU SIGNED IT ON 5-5-2015.

09:18AM 18 DO YOU SEE THAT?

09:18AM 19 A. YES.

09:18AM 20 Q. AND THAT'S YOUR SIGNATURE; RIGHT?

09:18AM 21 A. CORRECT.

09:18AM 22 Q. OKAY.

09:18AM 23 YOUR HONOR, WE OFFER 20033.

09:18AM 24 MR. LEACH: NO OBJECTION, YOUR HONOR.

09:18AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:18AM 1 (DEFENDANT'S EXHIBIT 20033 WAS RECEIVED IN EVIDENCE.)

09:18AM 2 BY MS. WALSH:

09:18AM 3 Q. AND JUST LOOKING AT THE FIRST PAGE, THIS WAS ALSO SIGNED,

09:18AM 4 BEFORE YOU SIGNED IT, BY HODA ALAMDAR.

09:18AM 5 DO YOU SEE THAT?

09:18AM 6 A. I DO.

09:18AM 7 Q. AND SHE -- HER TITLE WAS GENERAL SUPERVISOR; RIGHT?

09:18AM 8 A. YES.

09:18AM 9 Q. AND YOU DIDN'T REACH OUT TO HER TO TALK TO HER ABOUT THE

09:18AM 10 LAB, DID YOU?

09:18AM 11 A. NO.

09:18AM 12 Q. AND THEN ABOVE THAT IS LAGLEY GEE; RIGHT?

09:18AM 13 A. YES.

09:18AM 14 Q. AND HE IS THE -- OR WAS THE QA/QC MANAGER; RIGHT?

09:18AM 15 A. YES.

09:18AM 16 Q. AND I THINK YOU TESTIFIED ON WEDNESDAY THAT HE WAS SOMEONE

09:18AM 17 WHO YOU SIGNED A DELEGATION FOR; IS THAT CORRECT?

09:18AM 18 A. CORRECT.

09:18AM 19 Q. BUT YOU DIDN'T REACH OUT TO HIM TO TALK ABOUT THE LAB; IS

09:18AM 20 THAT RIGHT?

09:18AM 21 A. NO, I DID NOT.

09:18AM 22 Q. AND THEN JUST ONE MORE. IF WE CAN TAKE THAT DOWN.

09:19AM 23 IF YOU CAN TURN IN YOUR BINDER TO 20651.

09:19AM 24 A. YES.

09:19AM 25 Q. OKAY. JUST LOOKING AT THAT -- WELL, YOU CAN LOOK AT THE

09:19AM 1 WHOLE EXHIBIT, BUT FOCUSsing YOU ON THE FIRST PAGE. THIS IS
09:19AM 2 ANOTHER SOP THAT YOU SIGNED; CORRECT?

09:19AM 3 A. YES.

09:19AM 4 Q. AND YOU SIGNED IT ON MAY 5TH, 2015; RIGHT?

09:19AM 5 A. YES.

09:19AM 6 MS. WALSH: YOUR HONOR, WE OFFER 20651.

09:19AM 7 MR. LEACH: NO OBJECTION, YOUR HONOR.

09:19AM 8 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:19AM 9 (DEFENDANT'S EXHIBIT 20651 WAS RECEIVED IN EVIDENCE.)

09:19AM 10 BY MS. WALSH:

09:19AM 11 Q. IF WE CAN TAKE A LOOK AT THE FIRST PAGE. THIS RELATES TO
09:19AM 12 THERANOS LIS APPLICATION USER GUIDE; RIGHT?

09:19AM 13 A. YES.

09:19AM 14 Q. AND LIS STANDS FOR LABORATORY INFORMATION SYSTEM?

09:19AM 15 A. YES.

09:19AM 16 Q. OKAY. AND YOU SEE THAT ABOVE YOUR NAME THIS WAS SIGNED BY
09:19AM 17 MONETTE ROCKYMORE; IS THAT RIGHT?

09:19AM 18 A. YES, IT LOOKS THAT WAY, YES.

09:19AM 19 Q. AND SHE WAS A CLINICAL LAB SCIENTIST; CORRECT?

09:20AM 20 A. YES.

09:20AM 21 Q. AND DID YOU REACH OUT TO HER ABOUT ANY BUSINESS IN THE
09:20AM 22 LAB?

09:20AM 23 A. NO, I DID NOT.

09:20AM 24 Q. AND THEN MAX FOSQUE.

09:20AM 25 DO YOU SEE THAT?

09:20AM 1 A. I DO.

09:20AM 2 Q. AND HE WAS A PRODUCT MANAGER; CORRECT? OR ACCORDING TO

09:20AM 3 THIS DOCUMENT.

09:20AM 4 A. YES.

09:20AM 5 Q. AND I TAKE IT YOU DID NOT REACH OUT TO HIM ABOUT

09:20AM 6 THERANOS'S BUSINESS; RIGHT?

09:20AM 7 A. CORRECT.

09:20AM 8 Q. OKAY. YOU CAN TAKE THAT DOWN, MR. ALLEN.

09:20AM 9 OKAY. SO THESE SOP'S THAT WE JUST LOOKED AT, THEY'RE NOT

09:20AM 10 THE ONLY SOP'S THAT YOU SIGNED DURING YOUR TENURE; RIGHT?

09:20AM 11 A. CORRECT.

09:20AM 12 Q. AND YOU REVIEWED AND SIGNED OFF ON OTHER SOP'S AND OTHER

09:20AM 13 DOCUMENTS RELATING TO THE CLIA LAB; CORRECT?

09:20AM 14 A. YES.

09:20AM 15 Q. AND YOU DID THAT THROUGHOUT YOUR TENURE AT THERANOS;

09:20AM 16 RIGHT?

09:20AM 17 A. YES.

09:20AM 18 Q. AND YOU ENDED UP SIGNING HUNDREDS OF SOP'S, POLICIES AND

09:20AM 19 DOCUMENTS; RIGHT?

09:20AM 20 A. YES.

09:20AM 21 Q. AND THOSE -- WE'RE NOT GOING TO GO THROUGH ALL OF THEM,

09:20AM 22 BUT THOSE DOCUMENTS WERE SIMILAR TO THE ONES THAT WE SAW IN

09:21AM 23 THAT THEY HAD SIGNATURES ABOVE YOURS BEFORE YOU SIGNED; IS THAT

09:21AM 24 RIGHT?

09:21AM 25 A. YES.

09:21AM 1 Q. OKAY. AND I JUST WANT TO CONFIRM THAT YOU DIDN'T REACH
09:21AM 2 OUT TO ANY OF THOSE PEOPLE ABOUT THE THERANOS LAB; IS THAT
09:21AM 3 CORRECT?

09:21AM 4 A. THAT IS CORRECT.

09:21AM 5 IF I HAD SERIOUS QUESTIONS ABOUT THE SOP'S, I MIGHT HAVE.
09:21AM 6 BUT THE SOP'S WERE ACTUALLY IN VERY GOOD SHAPE.

09:21AM 7 Q. OKAY. AND YOU TESTIFIED THAT YOU WANTED A LIST OF
09:21AM 8 PERSONNEL; RIGHT?

09:21AM 9 A. YES.

09:21AM 10 Q. AND WE SAW MANY DIFFERENT NAMES THAT WERE PERSONNEL IN THE
09:21AM 11 LAB; RIGHT?

09:21AM 12 A. YES.

09:21AM 13 Q. AND WE SAW THEIR TITLES; CORRECT?

09:21AM 14 A. YES.

09:21AM 15 Q. OKAY. YOU JUST DIDN'T HAVE THEM IN ONE PLACE ON A LIST;
09:21AM 16 RIGHT?

09:21AM 17 A. CORRECT.

09:21AM 18 Q. OKAY. AND DID YOU -- YOU DIDN'T REACH OUT TO ANY OF THOSE
09:21AM 19 PEOPLE TO GET THE LIST ALL IN ONE PLACE, DID YOU?

09:21AM 20 A. MOST OF THEM WOULDN'T HAVE HAD IT.

09:21AM 21 Q. WELL, DID YOU REACH OUT TO ANY OF THEM TO ASK?

09:21AM 22 A. NO, I DID NOT.

09:21AM 23 Q. OKAY. YOU ALSO TESTIFIED THAT YOU HAD NO CONTACT WITH
09:22AM 24 YOUR CO-LAB DIRECTOR; RIGHT?

09:22AM 25 A. YES.

09:22AM 1 Q. AND THERE WAS NO DISCUSSION, AS YOU TESTIFIED ON
09:22AM 2 WEDNESDAY, ABOUT HOW TO DIVIDE UP YOUR RESPONSIBILITIES; RIGHT?
09:22AM 3 A. CORRECT.
09:22AM 4 Q. AND YOU ALSO TESTIFIED ABOUT, I THINK, YOU HADN'T HEARD OF
09:22AM 5 SUNIL DHAWAN WHILE YOU WERE WORKING AT THERANOS; RIGHT?
09:22AM 6 A. CORRECT.
09:22AM 7 Q. IF YOU COULD WAIT UNTIL I FINISH THE QUESTION, IT WOULD BE
09:22AM 8 EASIER FOR THE COURT REPORTER.
09:22AM 9 BUT YOU DID KNOW THAT THERE WAS A CO-LAB DIRECTOR WHEN YOU
09:22AM 10 STARTED WORKING AT THERANOS; RIGHT?
09:22AM 11 A. I DID.
09:22AM 12 Q. OKAY. AND YOU DIDN'T ASK ANYONE WHO THE CO-LAB DIRECTOR
09:22AM 13 WAS; IS THAT CORRECT?
09:22AM 14 A. YES.
09:22AM 15 Q. AND I TAKE IT YOU DIDN'T TAKE ANY STEPS TO REACH OUT TO
09:22AM 16 WHOEVER THAT CO-LAB DIRECTOR WAS AT THE TIME; RIGHT?
09:22AM 17 A. CORRECT.
09:22AM 18 Q. YOU ALSO TESTIFIED ON WEDNESDAY THAT YOU NEVER -- YOU WERE
09:23AM 19 NEVER ASKED TO VISIT THE LAB; CORRECT?
09:23AM 20 A. CORRECT.
09:23AM 21 Q. AND, IN FACT, YOU NEVER SET FOOT IN THE LAB; RIGHT?
09:23AM 22 A. YES.
09:23AM 23 Q. OKAY. BUT YOU DIDN'T ASK ANYONE FOR A TOUR OF THE
09:23AM 24 THERANOS LAB, DID YOU?
09:23AM 25 A. NO, I DID NOT.

09:23AM 1 Q. OKAY. AND YOU ALSO, AS BEING THE CO-LAB DIRECTOR, YOU HAD
09:23AM 2 THE TELEPHONE NUMBER AND ADDRESS OF THE LAB; RIGHT?
09:23AM 3 A. I DID HAVE THE ADDRESS, YES.
09:23AM 4 Q. OKAY. BUT YOU ALSO HAD THE TELEPHONE NUMBER, DIDN'T YOU?
09:23AM 5 A. I PROBABLY DID. I DON'T RECALL FOR SURE.
09:23AM 6 Q. OKAY. IF YOU CAN -- I JUST WANT TO SHOW YOU SOMETHING TO
09:23AM 7 REFRESH YOUR RECOLLECTION ON THAT.
09:23AM 8 IF YOU CAN TURN TO 10562 IN YOUR BINDER.
09:23AM 9 A. YES.
09:23AM 10 Q. IF YOU LOOK AT THE PAGE ENDING -- IT'S THE THIRD PAGE BUT
09:24AM 11 THE PAGE ENDING IN 0437.
09:24AM 12 DO YOU SEE THAT?
09:24AM 13 A. YES.
09:24AM 14 Q. AND THAT'S A FORM THAT YOU SIGNED; RIGHT?
09:24AM 15 A. YES.
09:24AM 16 Q. OKAY. AND LOOKING AT THE TOP BOX OF INFORMATION, DOES
09:24AM 17 THAT REFRESH YOUR RECOLLECTION AS TO WHETHER YOU HAD THE LAB'S
09:24AM 18 TELEPHONE NUMBER?
09:24AM 19 A. YES, I DEFINITELY HAVE SEEN IT.
09:24AM 20 Q. SO YOU HAD THE PHONE NUMBER?
09:24AM 21 A. I DID.
09:24AM 22 Q. OKAY. AND I JUST WANT TO CONFIRM, YOU, YOU NEVER CALLED
09:24AM 23 THE LAB TO SCHEDULE AN APPOINTMENT TO GO SEE THE LAB; RIGHT?
09:24AM 24 A. CORRECT.
09:24AM 25 Q. AND YOU NEVER -- YOU KNEW THE ADDRESS OF THE LAB; CORRECT?

09:24AM 1 A. I DID.

09:24AM 2 Q. AND YOU NEVER JUST TOOK A DRIVE OVER TO VISIT THE LAB ON

09:24AM 3 YOUR OWN; IS THAT RIGHT?

09:24AM 4 A. THAT IS TRUE.

09:24AM 5 Q. OKAY. AND SO YOU TESTIFIED ON WEDNESDAY THAT YOUR LEVEL

09:25AM 6 OF COMMUNICATION WITH THE LAB WAS A MATTER OF FRUSTRATION TO

09:25AM 7 YOU AND LED TO YOU DECIDING NOT TO RENEW YOUR CONTRACT; IS THAT

09:25AM 8 FAIR?

09:25AM 9 A. THAT'S PART OF IT.

09:25AM 10 AND PART OF IT WAS JUST BECAUSE IT WAS SUPPOSED TO BE A

09:25AM 11 VERY SHORT-TERM CONTRACT.

09:25AM 12 Q. OKAY. BUT THAT LEVEL OF COMMUNICATION WAS, AT LEAST YOU

09:25AM 13 TESTIFIED TO ON WEDNESDAY, WAS A MATTER OF FRUSTRATION TO YOU?

09:25AM 14 A. IT WAS.

09:25AM 15 Q. OKAY. BUT IT'S FAIR TO SAY, ISN'T IT, THAT YOU NEVER

09:25AM 16 REACHED OUT TO ANY OF THE SCIENTISTS IN THE LAB TO TALK TO

09:25AM 17 THEM; RIGHT?

09:25AM 18 A. I DID NOT PUSH, I DID NOT PUSH IT FROM MY SIDE, NO. THAT

09:25AM 19 IS CORRECT.

09:25AM 20 Q. AND YOU NEVER ASKED ANYONE, AS YOU JUST TESTIFIED, TO GET

09:25AM 21 A TOUR; RIGHT?

09:25AM 22 A. CORRECT.

09:25AM 23 Q. AND YOU NEVER JUST DROVE UP AS THE LAB DIRECTOR TO SAY,

09:25AM 24 HEY, I'M HERE, I WANT TO SEE THE LAB; RIGHT?

09:25AM 25 A. THAT IS TRUE.

09:25AM 1 I ALSO KNOW FROM EXPERIENCE THAT IN TODAY'S LABORATORY,
09:25AM 2 THAT DOESN'T WORK VERY WELL IN GENERAL BECAUSE OF WORK
09:25AM 3 SCHEDULES AND THE LIKE.

09:26AM 4 Q. OKAY. PUTTING LOGISTICS ASIDE, THOUGH, YOU NEVER TOOK ANY
09:26AM 5 STEPS TO VISIT THE LAB?

09:26AM 6 A. TRUE.

09:26AM 7 Q. IS THAT FAIR?

09:26AM 8 A. YEP.

09:26AM 9 MS. WALSH: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

09:26AM 10 THE COURT: REDIRECT?

09:26AM 11 MR. LEACH: BRIEFLY, YOUR HONOR. THANK YOU.

09:26AM 12 **REDIRECT EXAMINATION**

09:26AM 13 BY MR. LEACH:

09:26AM 14 Q. GOOD MORNING, DR. SAWYER.

09:26AM 15 A. GOOD MORNING.

09:26AM 16 Q. ON WEDNESDAY YOU WERE ASKED SOME QUESTIONS ABOUT AN
09:26AM 17 INDIVIDUAL NAMED JERRY HURST; CORRECT?

09:26AM 18 A. YES.

09:26AM 19 Q. AND MR. HURST NEVER TOLD YOU ANYTHING ABOUT THERANOS
09:26AM 20 RUNNING LDT'S; IS THAT RIGHT?

09:26AM 21 A. THAT IS TRUE.

09:26AM 22 Q. HE NEVER TOLD YOU ANYTHING ABOUT THERANOS USING A DEVICE
09:26AM 23 CALLED EDISON?

09:26AM 24 A. NOT BY THAT NAME, NO.

09:26AM 25 Q. HE NEVER TOLD YOU THAT THERANOS WAS USING, IN ITS CLINICAL

09:27AM 1 LAB, A DEVICE THAT THERANOS HAD MANUFACTURED?

09:27AM 2 A. CORRECT.

09:27AM 3 Q. OKAY. YOU HAD NO DISCUSSIONS WITH HIM ABOUT LDT'S OR

09:27AM 4 THERANOS MANUFACTURED ANALYZERS WITH MR. HURST?

09:27AM 5 MS. WALSH: OBJECTION. HEARSAY.

09:27AM 6 THE COURT: YOU'RE JUST ASKING IF SHE HAD A

09:27AM 7 CONVERSATION, NOT THE CONTENT?

09:27AM 8 MR. LEACH: CORRECT.

09:27AM 9 THE COURT: OVERRULED.

09:27AM 10 THE WITNESS: CORRECT.

09:27AM 11 BY MR. LEACH:

09:27AM 12 Q. OKAY. YOU ALSO WERE ASKED -- YOU SAID AS THE LAB DIRECTOR

09:27AM 13 YOU WERE AWARE THAT THERE WERE A SMALL NUMBER OF LDT'S RELATING

09:27AM 14 TO BACTERIA IN STOOLS.

09:27AM 15 DO I HAVE THAT RIGHT?

09:27AM 16 A. YES.

09:27AM 17 Q. THAT'S NOT BLOOD TESTING?

09:27AM 18 A. CORRECT.

09:27AM 19 Q. YOU ALSO WERE ASKED SOME QUESTIONS OR SOME QUESTIONS ABOUT

09:27AM 20 QUALITY CONTROL.

09:27AM 21 DO YOU RECALL QUESTIONS FROM MS. WALSH ABOUT THAT?

09:27AM 22 A. YES.

09:27AM 23 Q. SHE ASKED YOU ABOUT THE IMPORTANCE OF QUALITY CONTROL?

09:27AM 24 A. YES.

09:27AM 25 Q. AND WHY IS QUALITY CONTROL IMPORTANT?

09:27AM 1 A. BECAUSE THAT'S THE WAY IN WHICH YOU DEMONSTRATE THAT YOUR
09:28AM 2 ASSAYS ARE WORKING.

09:28AM 3 Q. OKAY. SO IF YOU ARE REPEATEDLY FAILING QUALITY CONTROL,
09:28AM 4 THAT CAN HAVE IMPLICATIONS FOR ACCURACY AND RELIABILITY?

09:28AM 5 A. ABSOLUTELY.

09:28AM 6 Q. YOU WERE ASKED QUESTIONS ABOUT SOP'S THAT YOU SIGNED?

09:28AM 7 A. YES.

09:28AM 8 Q. AND ALL OF THOSE SOP'S RELATED TO ORDINARY FDA APPROVED
09:28AM 9 MACHINES?

09:28AM 10 A. YES.

09:28AM 11 Q. THE HUNDREDS OF SOP'S THAT YOU SIGNED WERE RELATED TO FDA
09:28AM 12 APPROVED DEVICES?

09:28AM 13 A. YES.

09:28AM 14 Q. NOT THERANOS DEVICES?

09:28AM 15 A. CORRECT.

09:28AM 16 Q. YOU ALSO WERE SHOWN EXHIBIT 1107, THAT WALGREENS PRESS
09:28AM 17 RELEASE?

09:28AM 18 A. YES.

09:28AM 19 Q. THAT'S NOT SOMETHING THAT YOU EVER SAW AT THE TIME;
09:28AM 20 CORRECT?

09:28AM 21 A. CORRECT.

09:28AM 22 MR. LEACH: MAY I HAVE ONE MOMENT, YOUR HONOR?

09:28AM 23 THE COURT: YES.

09:28AM 24 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

09:29AM 25 MR. LEACH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

09:29AM 1 THANK YOU.

09:29AM 2 THANK YOU, DR. SAWYER.

09:29AM 3 MS. WALSH: I HAVE A FEW FOLLOW-UP.

09:29AM 4 THE COURT: SURE.

09:29AM 5 **RECROSS-EXAMINATION**

09:29AM 6 BY MS. WALSH:

09:30AM 7 Q. MR. HURST AND YOU WERE UNAWARE THAT THERANOS WAS RUNNING
09:30AM 8 ITS OWN LDT'S TO TEST BLOOD.

09:30AM 9 IS THAT WHAT YOU REMEMBER?

09:30AM 10 A. I CAN ABSOLUTELY NOT SPEAK FOR WHAT JERRY HURST WAS OR WAS
09:30AM 11 NOT AWARE OF.

09:30AM 12 Q. BUT YOU WERE NOT AWARE OF IT?

09:30AM 13 A. I WAS NOT AWARE OF THE FACT THAT THEY WERE ACTUALLY DOING
09:30AM 14 IT.

09:30AM 15 I WAS AWARE OF THE FACT THAT THEY WERE DEVELOPING
09:30AM 16 SOMETHING.

09:30AM 17 Q. OKAY. AND MR. LEACH JUST ASKED YOU ABOUT THE IMPORTANCE
09:30AM 18 OF QUALITY CONTROL?

09:30AM 19 A. YES.

09:30AM 20 Q. DO YOU REMEMBER THAT?

09:30AM 21 AND THE PERSON, AS FAR AS YOU WERE AWARE, THE PERSON IN
09:30AM 22 CHARGE OF QUALITY CONTROL IN THE THERANOS LAB WAS LANGLEY GEE;
09:30AM 23 IS THAT RIGHT?

09:30AM 24 A. YES.

09:30AM 25 Q. AND HE'S THE PERSON THAT YOU DELEGATED THAT RESPONSIBILITY

09:30AM 1 TO; IS THAT RIGHT?

09:30AM 2 A. YES.

09:30AM 3 MS. WALSH: I HAVE NOTHING FURTHER, YOUR HONOR.

09:30AM 4 THE COURT: MR. LEACH?

09:30AM 5 MR. LEACH: NOTHING FURTHER.

09:30AM 6 THE COURT: MAY THIS WITNESS BE EXCUSED?

09:30AM 7 MR. LEACH: SHE MAY, YES.

09:30AM 8 MS. WALSH: YES.

09:30AM 9 THE COURT: YOU'RE EXCUSED.

09:30AM 10 THE WITNESS: THANK YOU.

09:30AM 11 THE COURT: YOU'RE WELCOME.

09:31AM 12 DOES THE GOVERNMENT HAVE ANOTHER WITNESS TO CALL?

09:31AM 13 MR. BOSTIC: YES, YOUR HONOR.

09:31AM 14 THE UNITED STATES CALLS CHRIS LUCAS.

09:31AM 15 (PAUSE IN PROCEEDINGS.)

09:31AM 16 THE COURT: GOOD MORNING, SIR.

09:31AM 17 THE WITNESS: YES.

09:31AM 18 THE COURT: IF YOU WOULD COME OVER TO THE SIDE AND

09:32AM 19 FACE OUR COURTROOM DEPUTY, AND RAISE YOUR RIGHT HAND, SHE HAS A

09:32AM 20 QUESTION FOR YOU.

09:32AM 21 THE WITNESS: I'LL TAKE THE QUESTION.

09:32AM 22 **(GOVERNMENT'S WITNESS, CHRISTOPHER LUCAS, WAS SWORN.)**

09:32AM 23 THE WITNESS: I DO.

09:32AM 24 THE COURT: PLEASE HAVE A SEAT UP HERE, SIR, AND

09:32AM 25 MAKE YOURSELF COMFORTABLE.

09:32AM 1 THE WITNESS: THANK YOU.

09:32AM 2 THE COURT: YOU'RE WELCOME.

09:32AM 3 THE WITNESS: GOOD MORNING, JUDGE.

09:32AM 4 THE COURT: FEEL FREE TO ADJUST THAT CHAIR AND
09:32AM 5 MICROPHONE AS YOU NEED. THERE'S SOME WATER THERE SHOULD YOU
09:32AM 6 WISH TO PARTAKE.

09:32AM 7 THE WITNESS: OKAY.

09:32AM 8 THE COURT: AND WHEN YOU ARE COMFORTABLE, WOULD YOU
09:32AM 9 PLEASE STATE YOUR NAME AND THEN SPELL IT, PLEASE.

09:32AM 10 THE WITNESS: SURE. MY NAME IS CHRISTOPHER LUCAS.
09:32AM 11 C-H-R-I-S-T-O-P-H-E-R, LUCAS, L-U-C-A-S.

09:32AM 12 THE COURT: THANK YOU. COUNSEL.

09:32AM 13 MR. BOSTIC: THANK YOU.

09:32AM 14 **DIRECT EXAMINATION**

09:32AM 15 BY MR. BOSTIC:

09:32AM 16 Q. GOOD MORNING, MR. LUCAS.

09:32AM 17 A. GOOD MORNING.

09:32AM 18 Q. MR. LUCAS, IF YOU'RE FULLY VACCINATED, I UNDERSTAND THE
09:32AM 19 COURT WILL ALLOW YOU TO TESTIFY WITHOUT A MASK IF YOU'RE
09:32AM 20 COMFORTABLE DOING SO.

09:32AM 21 A. I AM COMFORTABLE. THANK YOU.

09:33AM 22 Q. MR. LUCAS, WERE YOU AN INVESTOR IN A COMPANY CALLED
09:33AM 23 THERANOS?

09:33AM 24 A. YES, WE WERE.

09:33AM 25 Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT THAT THIS MORNING,

09:33AM 1 BUT FIRST LET ME ASK YOU A FEW QUESTIONS ABOUT YOUR BACKGROUND.

09:33AM 2 A. SURE.

09:33AM 3 Q. CAN WE START WITH YOUR EDUCATION. CAN YOU SUMMARIZE YOUR

09:33AM 4 EDUCATION FOR US?

09:33AM 5 A. I HAVE A BACHELOR'S IN ENGINEERING FROM UCLA AND AN MBA

09:33AM 6 FROM U.S.C.

09:33AM 7 Q. AND CAN YOU GIVE US A SUMMARY OF YOUR EMPLOYMENT HISTORY

09:33AM 8 AFTER YOU OBTAINED THOSE DEGREES?

09:33AM 9 A. YES. GENERALLY I WORKED AT TECHNOLOGY STARTUPS AS A CFO

09:33AM 10 AND IN SOME CASES SALES POSITIONS.

09:33AM 11 AND THEN LATER AFTERWARDS -- AND I'VE BEEN AROUND VENTURE

09:33AM 12 CAPITAL, DUE TO SOME MEMBERS OF MY FAMILY, FOR MOST OF MY LIFE.

09:33AM 13 AND SO STARTING IN THE LATE '90S, I STARTED A VENTURE FIRM.

09:34AM 14 Q. IS THAT YOUR CURRENT OCCUPATION, WORKING IN VENTURE

09:34AM 15 CAPITAL?

09:34AM 16 A. CORRECT.

09:34AM 17 Q. LET ME ASK YOU FIRST, THE TECHNOLOGY STARTUPS YOU WORKED

09:34AM 18 WITH BEFORE, WERE ANY IN THE BIOTECH FIELD?

09:34AM 19 A. NO.

09:34AM 20 Q. LET'S TALK ABOUT YOUR CURRENT PROFESSION THEN.

09:34AM 21 WHERE ARE YOU CURRENTLY EMPLOYED?

09:34AM 22 A. OUR FIRM IS BLACK DIAMOND VENTURES.

09:34AM 23 Q. AND WHAT DOES BLACK DIAMOND VENTURES DO?

09:34AM 24 A. AS I SAID, I'M IN THE VENTURE BUSINESS, AND WE INVEST IN

09:34AM 25 TECHNOLOGY COMPANIES.

09:34AM 1 Q. AND WHAT IS YOUR POSITION AT BLACK DIAMOND VENTURES?

09:34AM 2 A. I'M MANAGING DIRECTOR.

09:34AM 3 Q. AND IN PLAIN LANGUAGE, WHAT DOES THAT TITLE MEAN?

09:34AM 4 A. I STARTED THE FIRM BACK IN THE LATE '90S, AND I'M A SENIOR
09:34AM 5 PERSON IN THE FIRM.

09:34AM 6 Q. AND IN THAT ROLE, HAVE YOU WORKED ON A NUMBER OF
09:34AM 7 INVESTMENTS IN COMPANIES AS PART OF BLACK DIAMOND VENTURES?

09:34AM 8 A. YES.

09:34AM 9 Q. I'D LIKE TO TALK TO YOU A BIT ABOUT HOW YOU APPROACH
09:35AM 10 EVALUATING A POTENTIAL INVESTMENT.

09:35AM 11 FIRST OF ALL, ARE THERE STANDARD STEPS THAT BLACK DIAMOND
09:35AM 12 TAKES IN THE PROCESS OF LOOKING AT A COMPANY THAT IT MIGHT
09:35AM 13 INVEST IN?

09:35AM 14 A. WELL, I THINK ALL VENTURE FIRMS TYPICALLY FOLLOW THE SAME.
09:35AM 15 WE, IN PARTICULAR, GENERALLY INVEST IN COMPANIES THAT HAVE BEEN
09:35AM 16 REFERRED TO US BY OTHERS THAT WE KNOW.

09:35AM 17 AND ONCE WE'VE BEEN INTRODUCED TO THE COMPANY, THEN WE DO
09:35AM 18 OUR DUE DILIGENCE, WHICH INCLUDES MARKET ANALYSIS, THE
09:35AM 19 COMPANY'S TECHNOLOGY, THE PERSONNEL, AND WHAT THEY'RE TRYING TO
09:35AM 20 ACCOMPLISH.

09:35AM 21 SO IT'S QUITE STANDARD FOR FIRMS LIKE US.

09:35AM 22 Q. AND IN DOING THAT RESEARCH, GATHERING THAT INFORMATION,
09:35AM 23 WHAT ARE YOUR SOURCES OF INFORMATION ABOUT THE COMPANY?

09:36AM 24 A. SO WE WOULD HAVE ANALYSTS OR OURSELVES LOOK AT ANY
09:36AM 25 AVAILABLE MATERIAL, TALK TO ANY OF OUR FRIENDS OR PROFESSIONALS

09:36AM 1 THAT WOULD HAVE SOME EXPERTISE IN THAT PARTICULAR AREA.

09:36AM 2 Q. DOES THAT PROCESS TYPICALLY INVOLVE GETTING INFORMATION
09:36AM 3 FROM THE COMPANY ITSELF?

09:36AM 4 A. AND, OF COURSE, FROM THE COMPANY. THEY WOULD TYPICALLY
09:36AM 5 PUT TOGETHER WHAT IS CALLED THE DATA ROOM WHERE THEY'D HAVE ALL
09:36AM 6 OF THE FINANCIAL INFORMATION, ANY OF THE PATENT INFORMATION AND
09:36AM 7 SO FORTH, THERE THAT WE COULD THEN REVIEW.

09:36AM 8 Q. AND WHEN YOU'RE LOOKING AT A COMPANY AND CONSIDERING
09:36AM 9 WHETHER TO INVEST, DO YOU CATEGORIZE THOSE INVESTMENTS BASED ON
09:36AM 10 HOW MATURE THE COMPANY IS, HOW LONG IT'S BEEN AROUND AND THINGS
09:36AM 11 LIKE THAT?

09:36AM 12 A. YES. TYPICALLY THOSE WHO HAVE JUST STARTED OBVIOUSLY ARE
09:36AM 13 THE MOST RISKY AND POTENTIALLY, BECAUSE OF THE VALUATION, HAVE
09:37AM 14 A LOWER VALUATION, AND YOU WOULD HOPE TO THEN MAKE A HIGHER
09:37AM 15 MULTIPLE ON WHAT YOU'VE INVESTED AT THAT TIME.

09:37AM 16 AND WE TYPICALLY INVEST FROM THAT STAGE ALL OF THE WAY UP
09:37AM 17 TO MORE MATURE COMPANIES WHERE MAYBE YOU'RE MORE -- WHERE IT'S
09:37AM 18 MORE CLEAR THAT YOU WILL MAKE A RETURN, BUT IT WOULD BE A LESS
09:37AM 19 RETURN BECAUSE THE RISK PROFILE WOULD HAVE GONE DOWN BY THEN.

09:37AM 20 Q. ON THE TOPIC OF RISK, AS SOMEONE EXPERIENCED IN MAKING
09:37AM 21 THESE KINDS OF INVESTMENTS, IS THERE RISK INHERENT IN EVERY
09:37AM 22 INVESTMENT OF THIS TYPE?

09:37AM 23 A. YES.

09:37AM 24 Q. OVER THE COURSE OF YOUR CAREER, HAS EVERY ONE OF YOUR
09:37AM 25 INVESTMENTS TURNED OUT TO RETURN A PROFIT?

09:37AM 1 A. I'D LIKE TO SAY THAT, BUT I CAN'T. IT IS RISK.

09:38AM 2 THE TYPICAL VC PROFILE IS MAYBE A FEW INVESTING IN TEN

09:38AM 3 COMPANIES, MAYBE ONE OR TWO IS A BIG HOME RUN, AND SOME ARE

09:38AM 4 OKAY, AND THREE OR FOUR YOU TAKE A ZERO.

09:38AM 5 Q. SO LET ME ASK YOU SOME QUESTIONS ABOUT THERANOS THEN.

09:38AM 6 HOW DID YOU FIRST BECOME AWARE OF THE COMPANY, THERANOS?

09:38AM 7 A. I WAS INTRODUCED BY MY UNCLE, DON LUCAS, WHO HAD BEEN

09:38AM 8 INTRODUCED TO ELIZABETH HOLMES BACK IN I THINK AROUND 2004,

09:38AM 9 2005. SOMETHING LIKE THAT.

09:38AM 10 AND HE WAS VERY IMPRESSED WITH HER AND WHAT SHE WAS TRYING

09:38AM 11 TO DO. AND THEN I MET HER BECAUSE OF HIM.

09:38AM 12 Q. AND DID YOUR UNCLE, DON LUCAS, END UP HAVING A ROLE OR A

09:38AM 13 JOB IN CONNECTION WITH THERANOS?

09:38AM 14 A. HE DID INVEST IN THE COMPANY, PERSONALLY JOINED THE BOARD,

09:39AM 15 AND FOR A WHILE HE WAS CHAIRMAN.

09:39AM 16 Q. DID THERE COME A TIME WHEN HE STEPPED BACK FROM HIS

09:39AM 17 INVOLVEMENT WITH THERANOS AND WAS NO LONGER ON THE BOARD?

09:39AM 18 A. HE DID, AND THAT WAS THE FIRST PART OF 2013.

09:39AM 19 Q. WHEN YOU FIRST BECAME AWARE OF THERANOS, DID THERE COME A

09:39AM 20 TIME WHEN YOU CONSIDERED INVESTING IN THERANOS YOURSELF?

09:39AM 21 A. YES.

09:39AM 22 Q. AND DID YOU END UP INVESTING IN THE COMPANY?

09:39AM 23 A. WE DID.

09:39AM 24 Q. AND WHAT WAS THE APPROXIMATE TIME OF YOUR FIRST INVESTMENT

09:39AM 25 IN THERANOS?

09:39AM 1 A. 2006.

09:39AM 2 Q. AND DO YOU REMEMBER THE APPROXIMATE AMOUNT OF THAT FIRST

09:39AM 3 INVESTMENT?

09:39AM 4 A. THE FIRST INVESTMENT WAS ABOUT 400,000.

09:39AM 5 Q. AND WHAT WAS THE SOURCE OF THAT MONEY? IS THESE -- ARE

09:39AM 6 THESE PERSONAL FUNDS THAT WE'RE TALKING ABOUT THAT BDT IS

09:39AM 7 INVESTING?

09:39AM 8 A. WE HAVE INDIVIDUAL INVESTORS AND THAT NET COMPRISE THE

09:40AM 9 MAJORITY OF THE FUNDS. AND THEN IN EVERY DEAL WE DO, I INVEST

09:40AM 10 ALSO PERSONALLY.

09:40AM 11 Q. AROUND THE TIME OF THAT FIRST INVESTMENT IN 2006, DID YOU

09:40AM 12 HAVE ANY CONVERSATIONS WITH MS. HOLMES ABOUT THE COMPANY?

09:40AM 13 A. YES.

09:40AM 14 Q. GENERALLY, WHAT WAS THE PURPOSE OF THOSE CONVERSATIONS

09:40AM 15 WITH MS. HOLMES AROUND THE TIME OF YOUR FIRST INVESTMENT?

09:40AM 16 A. GENERALLY, TO UNDERSTAND WHAT SHE WAS TRYING TO ACCOMPLISH

09:40AM 17 AND CLEARLY GET TO KNOW ELIZABETH AS WELL.

09:40AM 18 Q. LEADING UP TO THAT 2006 INVESTMENT, DID YOU HAVE A CHANCE

09:40AM 19 TO REVIEW ANY WRITTEN MATERIALS ABOUT THERANOS?

09:40AM 20 A. YES. I THINK THERE WAS A RUDIMENTARY BUSINESS PLAN AT THE

09:40AM 21 TIME AND WHICH DESCRIBED THE TECHNOLOGY AND WHAT THEY WERE

09:40AM 22 TRYING TO ACCOMPLISH.

09:40AM 23 Q. AND SO AT THAT TIME, FROM THE BUSINESS PLAN THAT YOU WERE

09:40AM 24 GIVEN AND FROM YOUR CONVERSATIONS WITH MS. HOLMES, WHAT DID YOU

09:41AM 25 UNDERSTAND THE COMPANY'S TECHNOLOGY TO BE?

09:41AM 1 A. IT WAS WITH A -- SHE HAD ALWAYS TALKED ABOUT HER FEAR OF
09:41AM 2 NEEDLES AND HAVING HER BLOOD DRAWN, AND THAT THAT'S A PROBLEM
09:41AM 3 FOR MANY PEOPLE, WHICH IT IS, AND THAT WITH A SMALL AMOUNT OF
09:41AM 4 BLOOD, WITH A PINPRICK OF BLOOD, HER GOAL AND MISSION WAS TO
09:41AM 5 THEN BE ABLE TO RUN GENERALLY ANY BLOOD TEST ON HER TECHNOLOGY.

09:41AM 6 Q. AND YOU JUST USED THE WORDS "GOAL" AND "MISSION," AND THAT
09:41AM 7 LEADS TO MY NEXT QUESTION, WHICH IS WHAT DID YOU UNDERSTAND TO
09:41AM 8 BE THE STATE OF THE TECHNOLOGY BACK THEN IN 2006? HOW FAR
09:41AM 9 ALONG WAS IT?

09:41AM 10 A. MAYBE -- CERTAINLY WELL AT THE EARLY STAGE. AND AT THAT
09:41AM 11 TIME, FRANKLY, WE DIDN'T KNOW IF IT WOULD EVER FULLY WORK OR
09:42AM 12 NOT BECAUSE IT WAS SO EARLY.

09:42AM 13 BUT IT SOUNDED SO PROMISING AND WHERE WE COULD GO WITH THE
09:42AM 14 TECHNOLOGY, THAT WE MADE THE DECISION TO INVEST.

09:42AM 15 Q. CAN YOU TELL US ABOUT WHAT THOSE FACTS DO TO YOUR
09:42AM 16 ASSESSMENT OF THE RISK OF THE INVESTMENT? WE'RE TALKING ABOUT
09:42AM 17 THE FACT THAT THE TECHNOLOGY IS IN THE EARLY STAGE, YOU'RE NOT
09:42AM 18 SURE WHETHER IT'S GOING TO WORK.

09:42AM 19 HOW DOES THAT CAUSE YOU TO WEIGH THE RISK OF THIS
09:42AM 20 INVESTMENT?

09:42AM 21 A. A VERY HIGH RISK.

09:42AM 22 Q. WAS THE 2006 INVESTMENT THE ONLY TIME THAT
09:42AM 23 BLACK DIAMOND VENTURES INVESTED IN THERANOS?

09:42AM 24 A. WE INVESTED TWO TIMES ACTUALLY IN 2006, ONE EARLY IN THE
09:42AM 25 YEAR AND THEN ONE LATER IN THE YEAR.

09:42AM 1 AND THEN WE INVESTED AGAIN IN 2013, THE END OF 2013.

09:42AM 2 Q. AND DO YOU RECALL THE APPROXIMATE AMOUNT OF THAT 2013
09:42AM 3 INVESTMENT?

09:42AM 4 A. ABOUT 5.4 MILLION.

09:43AM 5 Q. SO I'D LIKE TO ASK YOU ABOUT INFORMATION THAT YOU HAD
09:43AM 6 LEARNED FROM THERANOS BETWEEN THOSE TWO INVESTMENTS, BETWEEN
09:43AM 7 2006 AND 2013.

09:43AM 8 FIRST OF ALL, AFTER YOUR 2006 INVESTMENT IN THERANOS, DID
09:43AM 9 YOU RECEIVE MORE INFORMATION ABOUT THE COMPANY OVER THE YEARS?

09:43AM 10 A. YES.

09:43AM 11 Q. AND HOW DID YOU GET THAT INFORMATION?

09:43AM 12 A. GENERALLY FROM -- DIRECTLY FROM ELIZABETH.

09:43AM 13 Q. WERE THERE OTHER SOURCES THAT YOU HAD FOR INFORMATION
09:43AM 14 BETWEEN 2006 AND 2013?

09:43AM 15 A. IF I TALKED TO ANY OF THE FOLKS AT THE COMPANY, IT WOULD
09:43AM 16 HAVE BEEN FROM THEM.

09:43AM 17 BUT IN TERMS OF ANY WRITTEN MATERIAL -- ACTUALLY, I
09:43AM 18 SHOULD -- YES, THERE WAS A FINANCIAL PERSON AT THE COMPANY BACK
09:43AM 19 THEN THAT I WORKED WITH AS WELL, BUT PRIMARILY MOST OF THE
09:44AM 20 INFORMATION CAME DIRECTLY FROM ELIZABETH.

09:44AM 21 Q. AND HOW FREQUENTLY WERE YOU IN TOUCH WITH MS. HOLMES
09:44AM 22 DURING THAT TIME PERIOD, IF YOU CAN ESTIMATE?

09:44AM 23 A. IN PERSON, MAYBE A HALF A DOZEN TO A DOZEN TIMES A YEAR,
09:44AM 24 AND ON THE PHONE, MAYBE MORE FREQUENTLY. BUT SOMETHING LIKE
09:44AM 25 THAT.

09:44AM 1 Q. AND DURING THOSE CONVERSATIONS, DID MS. HOLMES GIVE YOU
09:44AM 2 INFORMATION ABOUT THE COMPANY'S TECHNOLOGY?

09:44AM 3 A. YES.

09:44AM 4 Q. AND DURING THOSE CONVERSATIONS, DID MS. HOLMES GIVE YOU
09:44AM 5 UPDATES ABOUT THE COMPANY'S BUSINESS ACTIVITY?

09:44AM 6 A. YES.

09:44AM 7 Q. YOU MENTIONED THAT YOUR UNCLE, DON LUCAS, WAS CHAIRMAN OF
09:44AM 8 THE BOARD DURING SOME OF THAT TIME; IS THAT CORRECT?

09:44AM 9 A. YES.

09:44AM 10 Q. AND DID YOU ALSO GET INFORMATION ABOUT THERANOS FROM HIM?

09:44AM 11 A. YES.

09:44AM 12 Q. HOW WOULD YOU DESCRIBE THE KINDS OF INFORMATION THAT YOU
09:45AM 13 GOT FROM HIM VERSUS THE KINDS OF INFORMATION YOU GOT FROM
09:45AM 14 MS. HOLMES, WERE THE RELATIVE AMOUNTS OF INFORMATION THAT YOU
09:45AM 15 GOT FROM THOSE TWO?

09:45AM 16 A. GENERALLY IT WAS CONSISTENT.

09:45AM 17 WHAT ELIZABETH WOULD TELL ME, DON MAY HAVE TOLD ME. MAYBE
09:45AM 18 ELIZABETH WOULD GO INTO MORE SPECIFICS, BUT IT WAS DURING THAT
09:45AM 19 EARLY PERIOD. IT WAS VERY EXCITING. VERY POSITIVE
09:45AM 20 INFORMATION.

09:45AM 21 Q. AND BETWEEN THOSE TWO INDIVIDUALS, YOUR UNCLE, DON LUCAS,
09:45AM 22 AND ELIZABETH HOLMES, THE CEO, WAS ONE OF THEM YOUR PRIMARY
09:45AM 23 SOURCE OF INFORMATION ABOUT THERANOS?

09:45AM 24 A. PROBABLY EQUAL DURING THE EARLY, EARLY PERIODS.

09:45AM 25 Q. DID THAT STOP BEING THE CASE WHEN YOUR UNCLE STEPPED AWAY

09:45AM 1 FROM THE BOARD AT THE BEGINNING OF 2013?

09:45AM 2 A. YES.

09:45AM 3 Q. GENERALLY SPEAKING, DURING YOUR CONVERSATIONS WITH

09:46AM 4 MS. HOLMES, WERE THE UPDATES THAT SHE GAVE YOU ABOUT THE

09:46AM 5 COMPANY POSITIVE OR NEGATIVE?

09:46AM 6 A. POSITIVE TO VERY POSITIVE.

09:46AM 7 Q. DO YOU RECALL DURING THAT TIME PERIOD EVER HEARING ANY

09:46AM 8 SIGNIFICANT NEGATIVE NEWS ABOUT THERANOS FROM MS. HOLMES?

09:46AM 9 A. NOT THAT I RECALL.

09:46AM 10 Q. DURING THAT TIME PERIOD, HOW DID THE LEVEL OF INFORMATION

09:46AM 11 AND TRANSPARENCY THAT YOU WERE GETTING COMPARE TO WHAT YOU HAD

09:46AM 12 EXPERIENCED WITH OTHER SIMILAR INVESTMENTS?

09:46AM 13 A. ACTUALLY, HIGHLY IRREGULAR. SHE WAS VERY GUARDED IN HOW

09:46AM 14 MUCH INFORMATION SHE PROVIDED. FINANCIAL INFORMATION IN

09:46AM 15 PARTICULAR WAS VERY MINIMAL.

09:46AM 16 Q. AND YOU FOUND THAT UNUSUAL COMPARED TO PREVIOUS

09:46AM 17 INVESTMENTS THAT YOU HAD WORKED WITH?

09:47AM 18 A. YES. COMPLETELY OUT OF THE ORDINARY.

09:47AM 19 Q. PRIOR TO YOUR INVOLVEMENT WITH THERANOS, HAD YOU INVESTED

09:47AM 20 IN COMPANIES THAT HAD PROPRIETARY TECHNOLOGY THAT THEY WERE

09:47AM 21 TRYING TO PROTECT FROM COMPETITORS?

09:47AM 22 A. YES.

09:47AM 23 Q. AND DID THE LEVEL OF SECRECY AND LACK OF TRANSPARENCY WITH

09:47AM 24 THERANOS STRIKE YOU AS UNUSUAL EVEN COMPARED TO THOSE OTHER

09:47AM 25 COMPANIES?

09:47AM 1

A. YES.

09:47AM 2

Q. IF I COULD ASK YOU.

09:47AM 3

MAY I APPROACH, YOUR HONOR?

09:47AM 4

THE COURT: YES.

09:47AM 5

MR. BOSTIC: (HANDING.)

09:47AM 6

Q. MR. LUCAS, IN THE BINDER THAT I'VE JUST HANDED YOU, CAN I

09:47AM 7

ASK YOU TO TURN TO TAB 5095.

09:48AM 8

AND BEFORE WE LOOK AT THAT DOCUMENT, LET ME ASK YOU,

09:48AM 9

DURING THIS TIME PERIOD 2006 TO, LET'S SAY, THE FIRST HALF OF

09:48AM 10

2013, WAS THERE ANY PUBLICLY AVAILABLE INFORMATION ABOUT

09:48AM 11

THERANOS THAT YOU RECALL?

09:48AM 12

A. I BELIEVE TOWARD 2013, OR 2012, 2013 MAYBE THERE WERE SOME

09:48AM 13

ARTICLES STARTING TO COME OUT ABOUT THE COMPANY.

09:48AM 14

BUT EARLIER ON THERE WASN'T A LOT OF -- IT WAS VERY MUCH

09:48AM 15

IN THE STEALTH MODE, SO THERE WAS NOT MUCH INFORMATION, IF ANY.

09:48AM 16

Q. OKAY. UNDERSTOOD.

09:48AM 17

LOOKING AT EXHIBIT 5095. DO YOU SEE THAT THAT'S AN EMAIL

09:48AM 18

DATED JULY 30TH, 2013, FROM THERANOS TO A GROUP OF INDIVIDUALS,

09:49AM 19

INCLUDING YOU?

09:49AM 20

A. YES.

09:49AM 21

MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5095.

09:49AM 22

MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

09:49AM 23

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:49AM 24

(GOVERNMENT'S EXHIBIT 5095 WAS RECEIVED IN EVIDENCE.)

09:49AM 25

BY MR. BOSTIC:

09:49AM 1 Q. MR. LUCAS, YOU'LL SEE THAT THE VERSION ON THE SCREEN,
09:49AM 2 WE'VE REDACTED EMAIL ADDRESSES.
09:49AM 3 BUT DO YOU SEE ONE THAT SAYS CHRIS@BDTVENTURES.COM?
09:49AM 4 A. YES.
09:49AM 5 Q. IS THAT YOUR WORK EMAIL ADDRESS?
09:49AM 6 A. YES.
09:49AM 7 Q. AND LET'S ZOOM IN ON -- AND FIRST OF ALL, AT THE VERY TOP
09:49AM 8 OF THIS PAGE, DO YOU SEE THAT THIS EMAIL IS SENT FROM THERANOS,
09:49AM 9 AND IT'S SENT TO A GROUP OF BCC'ED INDIVIDUALS BUT ALSO TO AN
09:49AM 10 ADDRESS SHAREHOLDERINFO@THERANOS.COM?
09:49AM 11 A. YES.
09:49AM 12 Q. LET'S GO DOWN AND LOOK AT THE CONTENT OF THIS MESSAGE.
09:49AM 13 THE EMAIL TO SHAREHOLDERS READS, "IT IS WITH GREAT
09:49AM 14 PLEASURE THAT I WRITE TO INFORM YOU OF OUR UPCOMING CONSUMER
09:50AM 15 LAUNCH."
09:50AM 16 DO YOU SEE THAT?
09:50AM 17 A. YES.
09:50AM 18 Q. DO YOU REMEMBER LEARNING ABOUT AN UPCOMING CONSUMER LAUNCH
09:50AM 19 IN MIDDLE OF 2013?
09:50AM 20 A. YES.
09:50AM 21 Q. HOW DID YOU TAKE THIS NEWS AS SOMEONE WHO HAD INVESTED IN
09:50AM 22 THE COMPANY?
09:50AM 23 A. WONDERFUL, RIGHT?
09:50AM 24 Q. DESCRIBE HOW THIS WAS GOOD NEWS FOR YOU?
09:50AM 25 A. WELL, IT MEANT THE COMPANY -- THE TECHNOLOGY WAS READY FOR

09:50AM 1 PRIME TIME AND ABLE TO BE SOLD INTO THE MARKETPLACE.

09:50AM 2 Q. AND DO YOU SEE THAT IN THE THIRD PARAGRAPH DOWN IT

09:50AM 3 MENTIONS A NEW WEBSITE BEING PREPARED IN ANTICIPATION OF THE

09:50AM 4 LAUNCH?

09:50AM 5 A. YES.

09:50AM 6 Q. OKAY. WE CAN SET THAT ASIDE.

09:50AM 7 IF I CAN ASK YOU TO LOOK AT EXHIBIT 1102.

09:51AM 8 I BELIEVE THIS EXHIBIT HAS BEEN ADMITTED ALREADY.

09:51AM 9 MAY WE PUBLISH, YOUR HONOR?

09:51AM 10 THE COURT: YES. YES.

09:51AM 11 BY MR. BOSTIC:

09:51AM 12 Q. MR. LUCAS, DO YOU SEE HERE AN EMAIL SENT ON SEPTEMBER 7TH,

09:51AM 13 2013?

09:51AM 14 A. YES.

09:51AM 15 Q. AND DO YOU SEE THAT IT'S TO A GROUP OF INDIVIDUALS, AND

09:51AM 16 INCLUDING YOU, ABOUT A QUARTER OF THE WAY DOWN THE PAGE, NEAR

09:51AM 17 THE TOP, ON THE LEFT SIDE?

09:51AM 18 A. YES.

09:51AM 19 Q. AND THIS IS SENT FROM THERANOS TO THAT SAME

09:51AM 20 SHAREHOLDERINFO@THERANOS.COM ADDRESS.

09:51AM 21 DO YOU SEE THAT?

09:51AM 22 A. YES.

09:51AM 23 Q. THIS EMAIL READS, "TO OUR SHAREHOLDERS,

09:51AM 24 "I AM DELIGHTED TO SHARE THAT WE HAVE NOW BEGUN THE

09:51AM 25 COMMERCIAL LAUNCH OF THE NEW PRODUCTS AND SERVICES WE'VE BEEN

09:51AM 1 WORKING ON FOR THE PAST YEARS."

09:52AM 2 DO YOU SEE THAT?

09:52AM 3 A. YES.

09:52AM 4 Q. WHAT WAS THE SIGNIFICANCE OF THAT NEWS TO YOU AS AN
09:52AM 5 INVESTOR?

09:52AM 6 A. WELL, EARLIER, AS I SAID, IT'S NOW -- IF YOU SAY IT'S
09:52AM 7 LAUNCHING, IT'S GOING OUT IN THE MARKETPLACE. SO GREAT NEWS.

09:52AM 8 Q. DO YOU SEE THAT THIS MESSAGE TO SHAREHOLDERS ALSO REFERS
09:52AM 9 THEN TO THE COMPANY'S NEW WEBSITE AT WWW.THERANOS.COM?

09:52AM 10 A. YES.

09:52AM 11 Q. AND IT ALSO PROVIDES A LINK TO AN ARTICLE PUBLISHED BY
09:52AM 12 "THE WALL STREET JOURNAL."

09:52AM 13 DO YOU SEE THAT?

09:52AM 14 A. YES.

09:52AM 15 Q. AND LET'S LOOK AT THAT ARTICLE, WHICH IS 1106, WHICH HAS
09:52AM 16 ALREADY BEEN ADMITTED.

09:52AM 17 MAY WE PUBLISH, YOUR HONOR?

09:52AM 18 THE COURT: YES.

09:52AM 19 BY MR. BOSTIC:

09:52AM 20 Q. AND DO YOU SEE HERE A "WALL STREET JOURNAL" ARTICLE FROM
09:52AM 21 EARLY SEPTEMBER TITLED "ELIZABETH HOLMES: THE BREAKTHROUGH OF
09:52AM 22 INSTANT DIAGNOSIS"?

09:52AM 23 A. YES.

09:52AM 24 Q. AND DO YOU REMEMBER READING THIS ARTICLE WHEN IT CAME OUT?

09:53AM 25 A. I'M SURE I DID.

09:53AM 1 Q. DURING THAT TIME PERIOD, WERE YOU READING EVERYTHING YOU
09:53AM 2 COULD FIND IN THE PRESS ABOUT THERANOS?

09:53AM 3 A. ABSOLUTELY.

09:53AM 4 Q. DID THAT HAVE ANYTHING TO DO WITH THE LEVEL OF
09:53AM 5 TRANSPARENCY THAT YOU WERE GETTING FROM MS. HOLMES AND THE
09:53AM 6 COMPANY?

09:53AM 7 A. NOT NECESSARILY.

09:53AM 8 Q. IS THAT SOMETHING THAT YOU WOULD DO WITH ANY COMPANY THAT
09:53AM 9 YOU HAD INVESTED IN?

09:53AM 10 A. OH, YES. ABSOLUTELY.

09:53AM 11 Q. I'D LIKE TO SHOW YOU SOME OF THE CONTENT IN THIS ARTICLE.
09:53AM 12 LET'S START WITH THE FIRST INDENTED PARAGRAPH.

09:53AM 13 AND DO YOU SEE THERE THERE'S A REFERENCE TO "SECRET THAT
09:53AM 14 HUNDREDS OF EMPLOYEES ARE NOW REFINING INVOLVES DEVICES THAT
09:53AM 15 AUTOMATE AND MINIATURIZE MORE THAN 1,000 LABORATORY TESTS, FROM
09:53AM 16 ROUTINE BLOOD WORK TO ADVANCED GENETIC ANALYSES"?

09:53AM 17 A. YES.

09:53AM 18 Q. AND DO YOU SEE THE NEXT SENTENCE SAYS, "THERANOS'S
09:53AM 19 PROCESSES ARE FASTER, CHEAPER AND MORE ACCURATE THAN THE
09:53AM 20 CONVENTIONAL METHODS AND REQUIRE ONLY MICROSCOPIC BLOOD
09:54AM 21 VOLUMES, NOT VIAL AFTER VIAL OF THE STUFF."

09:54AM 22 DO YOU SEE THAT?

09:54AM 23 A. YES.

09:54AM 24 Q. AND WAS THAT CONSISTENT WITH YOUR UNDERSTANDING OF WHAT
09:54AM 25 THE TECHNOLOGY COULD DO BASED ON YOUR CONVERSATIONS WITH

09:54AM 1 MS. HOLMES?

09:54AM 2 A. THAT CERTAINLY WAS THE HOPE, THAT AT SOME TIME IT WOULD DO
09:54AM 3 ALL OF THE TESTS.

09:54AM 4 I DID NOT BELIEVE AT THE TIME THAT -- YOU KNOW, THIS IS
09:54AM 5 MORE OF A MARKETING. I DID NOT BELIEVE AT THE TIME THAT THE
09:54AM 6 COMPANY COULD DO 1,000 TESTS.

09:54AM 7 MAYBE THEY COULD DO DOZENS OF TESTS, BUT --

09:54AM 8 Q. SORRY. GO -- FINISH YOUR ANSWER, PLEASE.

09:54AM 9 A. OH. JUST DOZENS OF TESTS, THE MOST COMMON TESTS THAT
09:54AM 10 WOULD BE PRESCRIBED, IF THAT'S THE RIGHT WORD.

09:54AM 11 Q. SO YOU UNDERSTOOD AT THIS TIME THAT THE COMPANY'S
09:54AM 12 TECHNOLOGY COULD PERFORM DOZENS OF TESTS?

09:54AM 13 A. YES.

09:54AM 14 Q. AND WHERE DID THAT UNDERSTANDING COME FROM?

09:55AM 15 A. FROM ELIZABETH.

09:55AM 16 Q. AND WHEN WE'RE TALKING ABOUT THE COMPANY'S TECHNOLOGY,
09:55AM 17 WERE YOU AWARE OF A PARTICULAR DEVICE OR GROUP OF DEVICES THAT
09:55AM 18 THE COMPANY WAS USING TO RUN THESE TESTS?

09:55AM 19 A. WELL, THERE WAS THE COLLECTION AND IT WOULD BE -- THE
09:55AM 20 BLOOD WOULD BE PUT IN A CARTRIDGE, AND THE CARTRIDGE WAS THEN
09:55AM 21 INSERTED INTO AN ANALYZER, IF THAT'S WHAT IT WAS CALLED, I'M
09:55AM 22 FORGETTING, AND THE ANALYZER WAS ABOUT THE SIZE OF A PC.

09:55AM 23 Q. AND YOUR UNDERSTANDING ABOUT THE ANALYZER AND WHAT IT
09:55AM 24 LOOKED LIKE, WHERE DID THAT UNDERSTANDING COME FROM?

09:55AM 25 A. I SAW IT.

09:55AM 1 Q. WHERE DID YOU SEE IT?

09:55AM 2 A. BOTH AT THE COMPANY AND THEN OUTSIDE WE WOULD HAVE AN
09:56AM 3 INVESTORS' CONFERENCE OR MY UNCLE HAD AN INVESTORS' CONFERENCE,
09:56AM 4 AND SHE WOULD BRING IT.

09:56AM 5 Q. SO WAS THAT ANALYZER THAT YOU DESCRIBED BEING THE SIZE OF
09:56AM 6 A PC, SOMETHING THAT YOU DISCUSSED MULTIPLE TIMES WITH
09:56AM 7 MS. HOLMES?

09:56AM 8 A. YES.

09:56AM 9 Q. THIS SENTENCE THAT SAYS, "THERANOS'S PROCESSES ARE FASTER,
09:56AM 10 CHEAPER AND MORE ACCURATE THAN CONVENTIONAL METHODS."

09:56AM 11 WAS THE ACCURACY OF THERANOS'S TESTS IMPORTANT TO YOU AS
09:56AM 12 SOMEONE WHO HAD INVESTED IN THE COMPANY?

09:56AM 13 A. WELL, ACCURACY IS VERY IMPORTANT. I'M JUST LOOKING HERE.
09:56AM 14 "MORE ACCURATE THAN CONVENTIONAL METHODS."

09:56AM 15 YOU WOULD TYPICALLY JUST HOPE AND BELIEVE THAT IF TESTED
09:56AM 16 TO THE GOLD STANDARD OF ALREADY COMMERCIALY AVAILABLE
09:56AM 17 MACHINES, THAT THE RESULTS WOULD BE CONSISTENT.

09:56AM 18 SO I DON'T NECESSARILY RECOLLECT THAT THEY WOULD BE MORE
09:57AM 19 ACCURATE, BUT CERTAINLY AT LEAST AS ACCURATE AS THE COMMERCIAL
09:57AM 20 MACHINES.

09:57AM 21 Q. THE CLAIM THAT THERANOS'S TESTS WERE MORE ACCURATE, HOW
09:57AM 22 DID THAT AFFECT YOUR VIEW OF YOUR INVESTMENT IN THE COMPANY, IF
09:57AM 23 IT WOULD AT ALL?

09:57AM 24 A. WELL, IF THAT WERE TRUE, IT WOULD JUST BE ONE MORE ADDED
09:57AM 25 BONUS THAT MORE ACCURATE, FASTER, AND AS THE ARTICLE SAYS,

09:57AM 1 CHEAPER THAN CONVENTIONAL METHODS.

09:57AM 2 Q. OKAY. YOU CAN SAID THAT ASIDE FOR NOW.

09:57AM 3 AND LET ME ASK YOU TO TURN TO TAB 5132 IN YOUR BINDER.

09:57AM 4 DO YOU SEE AT 5132 THERE'S AN EMAIL CHAIN INCLUDING

09:57AM 5 MESSAGES BETWEEN YOU AND MS. HOLMES FROM NOVEMBER OF 2013?

09:57AM 6 A. YES.

09:57AM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5132.

09:58AM 8 (PAUSE IN PROCEEDINGS.)

09:58AM 9 MR. COOPERSMITH: YOUR HONOR, OUR OBJECTION IS 802

09:58AM 10 AND 401.

09:58AM 11 MR. BOSTIC: SO, YOUR HONOR, I DON'T THINK THIS

09:58AM 12 NEEDS TO COME IN FOR THE TRUTH. IT'S BEING OFFERED TO SHOW THE

09:58AM 13 CONVERSATION THAT THIS INVESTOR WAS HAVING WITH MS. HOLMES

09:58AM 14 AROUND THE TIME LEADING UP TO HIS SECOND INVESTMENT IN 2013.

09:58AM 15 THE COURT: SO THIS MEMORIALIZES A CONVERSATION AND

09:58AM 16 THE PURPOSE OF IT FROM YOUR SEEKING TO ADMIT IT IS THAT IT

09:58AM 17 MEMORIALIZES CONVERSATIONS THAT WERE ATTENDANT TO THE

09:59AM 18 INVESTMENT.

09:59AM 19 YOU'RE NOT ASKING THAT IT BE ADMITTED FOR THE TRUTH OF THE

09:59AM 20 MATTER ASSERTED?

09:59AM 21 MR. BOSTIC: CORRECT, YOUR HONOR.

09:59AM 22 IT'S RELEVANT TO SHOW THE STATEMENTS THAT WERE MADE BY

09:59AM 23 MS. HOLMES AND WHAT SHE WAS AWARE OF AT THE TIME.

09:59AM 24 THE COURT: ALL RIGHT. THANK YOU.

09:59AM 25 SO THERE WAS AN OBJECTION UNDER FEDERAL RULES OF EVIDENCE

09:59AM 1 802, LADIES AND GENTLEMEN, THAT THIS IS HEARSAY.

09:59AM 2 I'M GOING TO OVERRULE THAT OBJECTION AND ALLOW THIS TO BE

09:59AM 3 ADMITTED, AND NOT FOR THE TRUTH OF THE MATTER ASSERTED.

09:59AM 4 AGAIN, YOU'VE HEARD ME SAY THAT AS TO OTHER PIECES OF

09:59AM 5 EVIDENCE, BUT AS TO THE CONVERSATION BETWEEN THE WITNESS AND

09:59AM 6 MS. HOLMES, AND IT'S NOT OFFERED AGAIN FOR THE TRUTH OF THE

09:59AM 7 MATTER ASSERTED. IT GOES TO ANY NOTICE ISSUES AND ALSO AS TO

09:59AM 8 THE SUBSTANTIATION OF A CONVERSATION DURING THE TIME PERIOD.

09:59AM 9 SO FOR THAT LIMITED PURPOSE, IT IS ADMITTED.

09:59AM 10 MR. COOPERSMITH: YOUR HONOR, TO POINT OUT THE

10:00AM 11 NOTICE ISSUE -- I'M SORRY. REGARDING THE NOTICE ISSUE, JUST TO

10:00AM 12 BE CLEAR, MR. BALWANI IS NOT ON THIS EMAIL STRING.

10:00AM 13 THE COURT: YOU'LL BE ABLE TO ASK THAT QUESTION

10:00AM 14 WHEN -- IF YOU CHOOSE TO CROSS-EXAMINE THIS WITNESS.

10:00AM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:00AM 16 THE COURT: OKAY.

10:00AM 17 MR. BOSTIC: MAY WE PUBLISH, YOUR HONOR?

10:00AM 18 THE COURT: YES.

10:00AM 19 (GOVERNMENT'S EXHIBIT 5132 WAS RECEIVED IN EVIDENCE.)

10:00AM 20 BY MR. BOSTIC:

10:00AM 21 Q. LET'S START, IF WE COULD, ON PAGE 5. AND LET'S LOOK AT

10:00AM 22 THE BOTTOM OF THE PAGE AND THE MESSAGE FROM SOMEONE NAMED

10:00AM 23 STEPHANIE HAGEN TO YOU AND LEONA GARRIOTT IN LATE OCTOBER 2013.

10:00AM 24 DO YOU SEE THAT?

10:00AM 25 A. YES.

10:00AM 1 Q. AND YOU SEE THAT THIS REFERENCES A MEETING THAT YOU
10:00AM 2 PREVIOUSLY HAD WITH MS. HOLMES?

10:00AM 3 A. YES.

10:00AM 4 Q. AROUND THIS TIME PERIOD, WERE YOUR REGULAR CONVERSATIONS
10:00AM 5 WITH MS. HOLMES CONTINUING?

10:00AM 6 A. YES.

10:00AM 7 Q. LET'S LOOK AT PAGE 4 OF THIS EXHIBIT.

10:01AM 8 AND DO YOU SEE THAT HERE THERE'S AN EMAIL FROM YOU BACK TO
10:01AM 9 STEPHANIE HAGEN ON OCTOBER 24TH, 2013?

10:01AM 10 A. YES.

10:01AM 11 Q. AND YOU MENTION AN ANNUAL MEETING AND WHETHER MS. HOLMES
10:01AM 12 MIGHT HAVE AVAILABILITY THAT DAY.

10:01AM 13 DO YOU SEE THAT?

10:01AM 14 A. YES.

10:01AM 15 Q. AND THEN BELOW YOU ADD A PARAGRAPH REGARDING THERANOS,
10:01AM 16 WHICH WAS SENT OUT BY NEWT GINGRICH TO HIS CONSTITUENTS WHICH
10:01AM 17 INCLUDED ONE OF YOUR INVESTORS.

10:01AM 18 DO YOU SEE THAT?

10:01AM 19 A. YES.

10:01AM 20 Q. AND DO YOU SEE THAT THAT CONTENT THAT WAS SENT OUT
10:01AM 21 APPARENTLY BY MR. GINGRICH SAYS THAT, "THERANOS IS A
10:01AM 22 BREAKTHROUGH BIOTECH COMPANY WHICH MAY SAVE \$61 BILLION IN
10:01AM 23 MEDICARE AND \$96.1 BILLION IN MEDICAID OVER THE NEXT DECADE."

10:01AM 24 DO YOU SEE THAT LANGUAGE?

10:01AM 25 A. I DO.

10:01AM 1 Q. AND AFTER THAT IT SAYS, "ITS NEW TECHNOLOGY CONDUCTS A
10:01AM 2 BATTERY OF UP TO 1,000 COMMON MEDICAL TESTS VERY INEXPENSIVE
10:01AM 3 AND FROM JUST ONE DROP OF BLOOD."

10:02AM 4 DO YOU SEE THAT?

10:02AM 5 A. I DO.

10:02AM 6 Q. AND SO YOU UNDERSTOOD AT THE TIME THAT THERANOS'S
10:02AM 7 TECHNOLOGY WAS CAPABLE OF CONDUCTING, I THINK YOU SAID, DOZENS
10:02AM 8 OF TESTS; IS THAT RIGHT?

10:02AM 9 A. YES.

10:02AM 10 Q. AND YOU SAW BACK THEN, APPARENTLY, THAT CLAIMS WERE
10:02AM 11 CIRCULATING THAT THE TECHNOLOGY COULD DO MANY MORE TESTS THAN
10:02AM 12 THAT.

10:02AM 13 FAIR TO SAY?

10:02AM 14 A. YES, AND THAT WAS CERTAINLY THE GOAL.

10:02AM 15 Q. LET'S GO FORWARD IN THIS EMAIL CHAIN TO PAGE 2.

10:02AM 16 A. ACTUALLY, IF I COULD ASK, WHEN I'M LOOKING AT THIS, EVEN
10:02AM 17 THOUGH I HAVE MY GLASSES ON, IF THE FONT COULD BE PUMPED UP.

10:02AM 18 Q. IF WE CAN ZOOM IN MORE?

10:02AM 19 A. YES.

10:02AM 20 Q. OF COURSE.

10:02AM 21 A. YEAH.

10:02AM 22 Q. AT THE TOP OF THIS PAGE, MAYBE A THIRD OF THE WAY DOWN, DO
10:02AM 23 YOU SEE THAT THIS EMAIL CHAIN WAS FORWARDED TO
10:02AM 24 ELIZABETH HOLMES.

10:03AM 25 MAYBE WE CAN ZOOM IN ON THAT.

10:03AM 1 A. YES, YES.

10:03AM 2 Q. AND DO YOU SEE THAT MS. HOLMES WAS SENT THIS ON

10:03AM 3 NOVEMBER 5TH, 2013?

10:03AM 4 A. YES.

10:03AM 5 Q. OKAY. WE CAN SET THAT ASIDE.

10:03AM 6 LET ME ASK YOU TO LOOK AT TAB 5143.

10:03AM 7 AND DO YOU HAVE 5143?

10:03AM 8 A. I DO.

10:03AM 9 Q. AND IS 5143 AN EMAIL CHAIN BETWEEN YOU AND THERANOS IN

10:03AM 10 DECEMBER OF 2013?

10:03AM 11 A. YES.

10:03AM 12 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5143.

10:03AM 13 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:03AM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:03AM 15 (GOVERNMENT'S EXHIBIT 5143 WAS RECEIVED IN EVIDENCE.)

10:03AM 16 BY MR. BOSTIC:

10:04AM 17 Q. LET'S START ON THE SECOND PAGE HERE.

10:04AM 18 AND DO YOU SEE THAT THIS BEGINS WITH A MESSAGE FROM

10:04AM 19 THERANOS TO STOCKHOLDERS?

10:04AM 20 A. YES.

10:04AM 21 Q. AND MAYBE WE CAN ZOOM IN ON THE TOP COUPLE PARAGRAPHS OF

10:04AM 22 THAT MESSAGE.

10:04AM 23 AND DO YOU SEE THAT THIS MESSAGE READS FROM DECEMBER 2013,

10:04AM 24 "WITH OUR LAUNCH TO CONSUMER HEALTH CARE THIS YEAR, WE ARE

10:04AM 25 RAPIDLY SCALING TO ESTABLISH A NATIONAL FOOTPRINT AND CAPTURE

10:04AM 1 THE OPPORTUNITY WE HAVE TO SERVE AS THE ONLY CERTIFIED NATIONAL
10:04AM 2 LABORATORY CAPABLE OF RUNNING ANY OF ITS LABORATORY TESTS FROM
10:04AM 3 A FEW TINY DROPLETS OF BLOOD."

10:04AM 4 DO YOU SEE THAT?

10:04AM 5 A. YES.

10:04AM 6 Q. AND AT THE BOTTOM OF THAT PARAGRAPH IT SAYS, "AS WE
10:04AM 7 PREPARE FOR 2014 AND CLOSING YEAR END, WE ARE ACTIVELY
10:04AM 8 INVESTING IN INFRASTRUCTURE TO BUILD THIS NEW INDUSTRY WE HAVE
10:04AM 9 CREATED."

10:04AM 10 DO YOU SEE THAT?

10:04AM 11 A. YES.

10:04AM 12 Q. THAT CLAIM THAT THE COMPANY WAS INVESTING IN
10:04AM 13 INFRASTRUCTURE TO BUILD THAT NEW INDUSTRY, WHAT DID THAT SIGNAL
10:04AM 14 TO YOU AS AN INVESTOR?

10:04AM 15 A. AGAIN, AS WE WERE TALKING BEFORE THAT IT'S NOW READY, THE
10:05AM 16 TECHNOLOGY IS READY FOR PRIME TIME, AND TO ROLL IT OUT
10:05AM 17 THROUGHOUT THE COUNTRY.

10:05AM 18 Q. LET'S LOOK AT PAGE 1 OF THIS EXHIBIT.

10:05AM 19 DO YOU SEE THAT THE BOTTOM HALF OF THE PAGE IS A MESSAGE
10:05AM 20 FROM SOMEONE NAMED ANA QUINTANA?

10:05AM 21 A. YES.

10:05AM 22 Q. AND WHO WAS ANA QUINTANA?

10:05AM 23 A. SHE HAS WORKED WITH ME AS A PRINCIPAL BACK IN AROUND 2000,
10:05AM 24 AND NOW SHE'S ALSO A SENIOR PERSON IN THE FIRM AS A PARTNER.

10:05AM 25 Q. AND WHAT DOES HER ROLE MEAN THEN AT

10:05AM 1 BLACK DIAMOND VENTURES? WHAT KIND OF WORK DOES SHE DO?

10:05AM 2 A. SHE ALSO HELPS VET THE VARIOUS COMPANIES THAT WE LOOK AT

10:05AM 3 TO INVEST.

10:05AM 4 Q. AND HER MESSAGE TO THERANOS CC'S YOU ON DECEMBER 16TH.

10:06AM 5 DO YOU SEE THAT?

10:06AM 6 A. YES.

10:06AM 7 Q. AND SHE WRITES, "BLACK DIAMOND VENTURES IS INTERESTED IN

10:06AM 8 IN INCREASING ITS EQUITY POSITION IN THERANOS."

10:06AM 9 DO YOU SEE THAT?

10:06AM 10 A. YES.

10:06AM 11 Q. AND LET ME ASK, FIRST OF ALL, AT THIS TIME ON

10:06AM 12 DECEMBER 16TH, HAD THE FINAL DECISION BEEN MADE TO INVEST MORE

10:06AM 13 MONEY IN THERANOS OR WERE THERE SOME ADDITIONAL QUESTIONS TO BE

10:06AM 14 ANSWERED, IF YOU RECALL?

10:06AM 15 A. WELL, WE CERTAINLY WERE INTERESTED IN INCREASING OUR

10:06AM 16 INVESTMENT. AND THE WAY OUR FIRM WORKED IS ALL OF OUR

10:06AM 17 INVESTORS ARE INDIVIDUALS, AND THEN WE WOULD TYPICALLY HAVE THE

10:06AM 18 CEO OF THE COMPANY PRESENT TO OUR GROUP, AND IT'S AFTER THAT

10:06AM 19 TIME, ONCE WE DETERMINE INTEREST FROM OUR INVESTORS, THEN WE

10:06AM 20 MAKE THE FINAL DECISION TO INVEST.

10:06AM 21 Q. IF I COULD ASK YOU TO LOOK NEXT AT TAB 5144, WHICH IS THE

10:07AM 22 NEXT ONE.

10:07AM 23 AND AT 5144, DO YOU SEE SOME CONTINUING DISCUSSION IN THIS

10:07AM 24 SAME EMAIL CHAIN?

10:07AM 25 A. YES.

10:07AM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5144.

10:07AM 2 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:07AM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:07AM 4 (GOVERNMENT'S EXHIBIT 5144 WAS RECEIVED IN EVIDENCE.)

10:07AM 5 BY MR. BOSTIC:

10:07AM 6 Q. LET'S START ON PAGE 3.

10:07AM 7 DO YOU SEE HERE IT BEGINS WITH THAT SAME MESSAGE TO

10:07AM 8 SHAREHOLDERS?

10:07AM 9 A. YES.

10:07AM 10 Q. AND LET'S LOOK AT PAGE 2. LET'S ZOOM IN ON YOUR MESSAGE

10:07AM 11 IN THE MIDDLE OF THE PAGE.

10:07AM 12 THIS IS DECEMBER 18TH, 2013, TWO DAYS AFTER THE MESSAGE WE

10:07AM 13 WERE JUST LOOKING AT; RIGHT?

10:07AM 14 A. YES.

10:07AM 15 Q. AND DO YOU SEE HERE THAT YOU SEND SOME QUESTIONS BACK TO

10:07AM 16 THERANOS?

10:07AM 17 A. YES.

10:07AM 18 Q. I WANT TO ASK YOU ABOUT A COUPLE OF THESE. THE FIRST

10:07AM 19 QUESTION SAYS, "WHEN AND HOW CAN WE EXPECT A PARTIAL OR FULL

10:08AM 20 LIQUIDITY EVENT?"

10:08AM 21 DO YOU SEE THAT?

10:08AM 22 A. YES.

10:08AM 23 Q. AND CAN YOU DESCRIBE WHAT THAT MEANS AND WHY YOU WERE

10:08AM 24 ASKING ABOUT THAT?

10:08AM 25 A. WELL, WHEN YOU INVEST IN A COMPANY, AND YOU'RE OBVIOUSLY

10:08AM 1 INVESTING TO MAKE A RETURN FOR YOUR INVESTORS, AND THE WAY YOU
10:08AM 2 DO THAT, IS YOU EITHER HAVE A PARTIAL LIQUIDITY EVENT, MEANING
10:08AM 3 A PARTIAL SALE OF YOUR STOCKS, OR A FULL LIQUIDITY EVENT WHERE
10:08AM 4 YOU'RE SELLING EITHER ALL OF YOUR STOCK OR THE COMPANY ITSELF
10:08AM 5 HAS BEEN SOLD.

10:08AM 6 Q. AND HAD YOU HAD CONVERSATIONS WITH MS. HOLMES ABOUT THE
10:08AM 7 POSSIBILITY OF A LIQUIDITY EVENT?

10:08AM 8 A. YES.

10:08AM 9 Q. NUMBER 4 IN YOUR LIST SAYS, "WE HAVE EXPRESSED INTEREST IN
10:08AM 10 THIS ROUND, HOWEVER, OUR CONCERN IS THAT THE EXPECTED CLOSING
10:08AM 11 DATE OF DECEMBER 31ST, 2013, MAY PRECLUDE US FROM
10:08AM 12 PARTICIPATING. DUE TO THIS SHORT PERIOD OF TIME, IS AN
10:09AM 13 EXTENSION CONTEMPLATED?"

10:09AM 14 DO YOU SEE THAT?

10:09AM 15 A. YES.

10:09AM 16 Q. AND CAN YOU DESCRIBE WHY THE CLOSING DATE WAS CREATING
10:09AM 17 SOME DIFFICULTY OR MIGHT HAVE PRECLUDED BLACK DIAMOND VENTURES
10:09AM 18 FROM PARTICIPATING?

10:09AM 19 A. WELL, BECAUSE IT WAS SO SHORT, WE MAY NOT HAVE BEEN ABLE
10:09AM 20 TO GO GET ALL OF THE INFORMATION OUT TO OUR INVESTORS AND HAVE
10:09AM 21 THE CONVERSATIONS TO DETERMINE THEIR INTEREST, FIRSTLY;

10:09AM 22 AND THEN, SECONDLY, HAVE THEM ALL WIRE THEIR FUNDS SO WE
10:09AM 23 COULD MAKE THE DECEMBER 31ST TIMEFRAME.

10:09AM 24 Q. WERE YOU FEELING TIME PRESSURE TO GET THESE THINGS FIGURED
10:09AM 25 OUT IN TIME FOR THAT CLOSING DATE?

10:09AM 1 MR. COOPERSMITH: OBJECTION. LEADING.

10:09AM 2 THE COURT: WELL, IT WAS LEADING. IF YOU WANT TO
10:09AM 3 REPHRASE.

10:09AM 4 BY MR. BOSTIC:

10:09AM 5 Q. HOW DID THE APPROACHING CLOSING DATE AFFECT YOUR PROCESS
10:09AM 6 AND YOUR FEELING ABOUT INVESTIGATING OR EXPLORING THIS
10:09AM 7 INVESTMENT?

10:09AM 8 A. WELL, WE CERTAINLY HAD TO HUSTLE AND -- BUT I UNDERSTOOD
10:10AM 9 THE REASON THAT IT HAD TO CLOSE BY DECEMBER 31ST AS WALGREENS
10:10AM 10 HAD SOME SORT OF AGREEMENT WITH THE COMPANY TO -- I'M
10:10AM 11 FORGETTING A LITTLE BIT -- BUT TO CONVERT SOME OF THE MONEY
10:10AM 12 THAT THEY LOANED TO THE COMPANY INTO EQUITY, AND IT HAD TO BE
10:10AM 13 ACCOMPLISHED BY THE END OF 2013.

10:10AM 14 Q. AND WHERE DID THAT UNDERSTANDING COME FROM?

10:10AM 15 A. FROM ELIZABETH.

10:10AM 16 Q. DID MS. HOLMES GIVE YOU AN EXPLANATION AS TO WHY THIS
10:10AM 17 OPPORTUNITY TO INVEST WAS NOT ANNOUNCED BEFORE
10:10AM 18 MID-DECEMBER 2013?

10:10AM 19 A. I DON'T RECALL.

10:10AM 20 Q. DO YOU SEE AT THE TOP OF PAGE 2, IF WE CAN ZOOM IN THERE,
10:10AM 21 THERE'S A REFERENCE TO A CALL THAT HAD HAPPENED RECENTLY
10:10AM 22 BETWEEN YOU AND MS. HOLMES?

10:11AM 23 A. YES.

10:11AM 24 Q. AROUND THIS TIME PERIOD, SO MID-DECEMBER 2013, DID YOU
10:11AM 25 CONTINUE TO BE IN FREQUENT CONTACT WITH ELIZABETH HOLMES, THE

10:11AM 1 CEO?

10:11AM 2 A. YES.

10:11AM 3 Q. AND DID YOU CONTINUE TO GET INFORMATION FROM HER ABOUT THE

10:11AM 4 COMPANY'S TECHNOLOGY AND BUSINESS?

10:11AM 5 A. YES.

10:11AM 6 Q. OKAY. WE CAN SET THAT ASIDE.

10:11AM 7 LET'S LOOK AT 5444.

10:11AM 8 AND AT 5444, DO YOU SEE AN EMAIL CHAIN BETWEEN YOU AND

10:11AM 9 MS. HOLMES IN LATE DECEMBER 2013?

10:11AM 10 A. YES.

10:11AM 11 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5444.

10:11AM 12 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:11AM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:11AM 14 (GOVERNMENT'S EXHIBIT 5444 WAS RECEIVED IN EVIDENCE.)

10:11AM 15 BY MR. BOSTIC:

10:11AM 16 Q. LET'S START ON PAGE 2.

10:11AM 17 DO YOU SEE THAT IN THE TOP HALF OF THE PAGE THERE'S A

10:11AM 18 MESSAGE FROM YOU TO MS. HOLMES ON DECEMBER 25TH, 2013?

10:12AM 19 A. YES. I'M ONLY SMILING THAT I EVEN EMAILED ON CHRISTMAS.

10:12AM 20 (LAUGHTER.)

10:12AM 21 BY MR. BOSTIC:

10:12AM 22 Q. OKAY. LET'S LOOK AT A MESSAGE THAT YOU SENT THE DAY

10:12AM 23 BEFORE TO SEE HOW THIS CONVERSATION GOT STARTED ACTUALLY.

10:12AM 24 AT THE BOTTOM OF PAGE 2, DO YOU SEE THAT THIS BEGINS WITH

10:12AM 25 A MESSAGE FROM YOU TO MS. HOLMES THE PREVIOUS DAY?

10:12AM 1 A. YES. AND IT STILL GOES, WHY AM I EMAILING ON
10:12AM 2 CHRISTMAS EVE? BUT ANYWAY.

10:12AM 3 (LAUGHTER.)

10:12AM 4 BY MR. BOSTIC:

10:12AM 5 Q. FAIR TO SAY YOU WERE WORKING HARD DURING THIS TIME PERIOD
10:12AM 6 TO TRY TO MEET THAT DECEMBER 31ST DEADLINE?

10:12AM 7 A. YES.

10:12AM 8 AND TO ADD SOME COLOR, I TOLD ANA I WOULD NOT SHAVE UNTIL
10:13AM 9 WE FINISHED THE FINANCING. SO WE WENT FOR SOME PERIOD OF TIME
10:13AM 10 24/7 ACTUALLY.

10:13AM 11 Q. AND LET'S LOOK AT THE FOLLOWING PAGE AND LOOK AT THE
10:13AM 12 CONTENT OF YOUR DECEMBER 24TH EMAIL.

10:13AM 13 DO YOU SEE THERE YOU ARE ASKING MS. HOLMES SOME QUESTIONS?

10:13AM 14 A. YES.

10:13AM 15 Q. AND YOU SAY AT THE TOP, "THERE IS SIGNIFICANT INTEREST IN
10:13AM 16 PARTICIPATING IN THIS ROUND. THE CHALLENGE WILL BE GETTING ALL
10:13AM 17 OF THE FUNDS PRIOR TO YEAREND."

10:13AM 18 DO YOU SEE THAT?

10:13AM 19 A. YES.

10:13AM 20 Q. AND YOU THEN ASK, ARE THE STRATEGIC PARTNERS CONVERTING
10:13AM 21 THE ENTIRE AMOUNT OF THEIR NOTES IN THIS OFFERING?

10:13AM 22 DO YOU SEE THAT QUESTION?

10:13AM 23 A. YES.

10:13AM 24 Q. AND THEN YOU ALSO ASK "HOW MUCH NEW CAPITAL IS COMING IN?"

10:13AM 25 DO YOU SEE THAT?

10:13AM 1

A. YES.

10:13AM 2

Q. AND WHY WERE YOU INTERESTED IN THE ANSWERS TO THOSE

10:13AM 3

QUESTIONS?

10:13AM 4

A. WELL, SO IF YOU'RE SCALING UP AND TRY TO BUILD THE

10:13AM 5

INFRASTRUCTURE, YOU WANT TO MAKE SURE THAT THE REQUISITE AMOUNT

10:14AM 6

OF MONEY IS COMING IN, AND I'M FORGETTING THE ANSWERS AT THE

10:14AM 7

TIME, BUT CLEARLY A LARGE AMOUNT OF MONEY IS COMING IN.

10:14AM 8

Q. LET'S LOOK AT THE ANOTHER QUESTION YOU HAD IN THE SAME

10:14AM 9

CHAIN ON PAGE 1 OF THE EXHIBIT.

10:14AM 10

DO YOU SEE TOWARDS THE BOTTOM OF THE PAGE THERE'S A

10:14AM 11

MESSAGE FROM YOU ON DECEMBER 26TH WHERE YOU SAY, "ON A

10:14AM 12

DIFFERENT TOPIC."

10:14AM 13

YOU ASK, "ONE OF OUR INVESTORS ASKED WHAT INFORMATION WAS

10:14AM 14

PROVIDED TO THE STRATEGIC PARTNERS SO THAT THEY COULD MAKE

10:14AM 15

THEIR DECISION WHETHER TO CONVERT OR NOT?"

10:14AM 16

DO YOU SEE THAT QUESTION?

10:14AM 17

A. YES.

10:14AM 18

Q. AND CAN YOU EXPLAIN WHAT YOU WERE ASKING HERE?

10:14AM 19

A. WELL, AS I SAID EARLIER, THAT THERE WAS SOME PROVISION

10:14AM 20

FOR, AND I BELIEVE IT WAS WALGREENS, YOU KNOW, WHAT INFORMATION

10:14AM 21

WAS BEING PROVIDED TO THEM SO THAT THEY COULD DECIDE WHETHER TO

10:14AM 22

CONVERT INTO THIS EQUITY, INTO THIS EQUITY RAISE.

10:15AM 23

Q. AROUND THIS TIME PERIOD, WERE YOU AND THE INVESTORS WHO

10:15AM 24

WORK WITH BLACK DIAMOND VENTURES INTERESTED IN TRYING TO GET

10:15AM 25

MORE INFORMATION FROM THERANOS?

10:15AM 1 A. SURE.

10:15AM 2 Q. LET'S LOOK AT THE MESSAGE JUST ABOVE THAT, WHERE
10:15AM 3 MS. HOLMES RESPONDS TO YOUR QUESTION AND SAYS, "OUR RECENT
10:15AM 4 MILESTONES IN ENTERING THIS 180 BILLION PLUS INDUSTRY, AND THE
10:15AM 5 POTENTIAL OUR PARTNERS THINK WE HAVE TO REVOLUTIONIZE HEALTH
10:15AM 6 CARE, OBVIOUSLY ALSO SPEAK FOR THEMSELVES IN THIS CONTEXT BASED
10:15AM 7 ON EVERYTHING IN THE PUBLIC DOMAIN..."

10:15AM 8 DO YOU SEE THAT?

10:15AM 9 A. YES.

10:15AM 10 Q. AND DO YOU RECALL MS. HOLMES GIVING YOU ANY ADDITIONAL,
10:15AM 11 FOR EXAMPLE, WRITTEN MATERIALS AROUND THIS TIME PERIOD
10:15AM 12 DETAILING WHAT THE COMPANY WAS DOING?

10:15AM 13 A. I DON'T RECALL.

10:15AM 14 Q. AND JUST ABOVE THAT YOU WRITE, "AS WE PULL TOGETHER OUR
10:16AM 15 FINANCING, I WOULD LIKE TO HAVE A CONVERSATION WITH YOU."

10:16AM 16 DO YOU SEE THAT?

10:16AM 17 A. YES.

10:16AM 18 Q. OKAY. LET'S LOOK AT 5447.

10:16AM 19 SO THROUGHOUT THIS TIME PERIOD, DID YOU CONTINUE TO BE IN
10:16AM 20 TOUCH WITH MS. HOLMES NOT ONLY BY EMAIL BUT ALSO BY TELEPHONE?

10:16AM 21 A. I WOULD SAY SO, YES.

10:16AM 22 Q. LOOKING AT 5447, DO YOU SEE THAT THAT IS AN EMAIL CHAIN
10:16AM 23 BETWEEN BLACK DIAMOND VENTURES AND THERANOS RELATING TO YOUR
10:16AM 24 INVESTMENT?

10:16AM 25 A. YES.

10:16AM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5447.

10:16AM 2 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:16AM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:16AM 4 (GOVERNMENT'S EXHIBIT 5447 WAS RECEIVED IN EVIDENCE.)

10:16AM 5 BY MR. BOSTIC:

10:16AM 6 Q. LET'S ZOOM IN ON THE SECOND TO THE TOP EMAIL.

10:16AM 7 DO YOU SEE HERE, MR. LUCAS, THERE'S A MESSAGE FROM

10:17AM 8 MS. QUINTANA, CC'ING YOU AND CONFIRMING THAT THE WIRE FROM

10:17AM 9 BLACK DIAMOND VENTURES WAS INITIATED THAT MORNING?

10:17AM 10 A. YES.

10:17AM 11 Q. AND DO YOU SEE THAT THE AMOUNT OF THE INVESTMENT WAS

10:17AM 12 \$5,349,900?

10:17AM 13 A. YES.

10:17AM 14 Q. AND WAS THAT BLACK DIAMOND VENTURES'S, I GUESS, THIRD

10:17AM 15 INVESTMENT IN THERANOS?

10:17AM 16 A. CORRECT.

10:17AM 17 Q. OKAY. AND THE DATE OF THIS IS DECEMBER 31ST, 2013;

10:17AM 18 CORRECT?

10:17AM 19 A. YES.

10:17AM 20 Q. AND WE CAN SET THAT ASIDE.

10:17AM 21 LET'S LOOK AT 7366, WHICH SHOULD BE AT THE BACK OF YOUR

10:17AM 22 BINDER.

10:17AM 23 AND DO YOU HAVE 7366 IN FRONT OF YOU?

10:17AM 24 A. I DO.

10:17AM 25 Q. AND LET'S START ON THE SECOND PAGE, AND I'LL ASK YOU TO

10:17AM 1 LOOK AT THAT PAGE OF THE DOCUMENT.

10:17AM 2 DO YOU SEE THAT THAT IS A MESSAGE FROM MS. QUINTANA,
10:18AM 3 CC'ING YOU AND INCLUDING SOME MATERIALS RELATING TO THE
10:18AM 4 THERANOS INVESTMENT?

10:18AM 5 A. YES.

10:18AM 6 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS
10:18AM 7 EXHIBIT 7366, EXCLUDING PAGE 1.

10:18AM 8 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:18AM 9 THE COURT: IT'S ADMITTED, EXCLUDING PAGE 1. THE
10:18AM 10 BALANCE IS ADMITTED. IT MAY BE PUBLISHED.

10:18AM 11 (DEFENDANT'S EXHIBIT 7366, EXCLUDING PAGE 1, WAS RECEIVED
10:18AM 12 IN EVIDENCE.)

10:18AM 13 BY MR. BOSTIC:

10:18AM 14 Q. AND LET'S START WITH PAGE 2 OF THAT EXHIBIT.

10:18AM 15 AND DO YOU SEE HERE WE'RE LOOKING AT A MESSAGE SENT ON
10:18AM 16 DECEMBER 29TH, 2013?

10:18AM 17 A. YES.

10:18AM 18 Q. AND THE TEXT OF THAT EMAIL SAYS, "DEAR BDT INVESTOR,
10:18AM 19 "THANK YOU FOR YOUR INTEREST AND PARTICIPATION IN THIS
10:18AM 20 SERIES C-1 STOCK FINANCING."

10:18AM 21 WAS THIS RELATING TO THE THERANOS INVESTMENT?

10:19AM 22 A. YES.

10:19AM 23 Q. AND IT SAYS, "PER OUR COUNSEL'S RECOMMENDATION, WE WOULD
10:19AM 24 LIKE TO SHARE ADDITIONAL INFORMATION AND DISCLOSURES IN THE
10:19AM 25 ATTACHED ACKNOWLEDGEMENT LETTER AND ACCOMPANYING EXHIBIT A."

10:19AM 1 DO YOU SEE THAT?

10:19AM 2 A. YES.

10:19AM 3 Q. AND THEN IF WE LOOK AT PAGE 4 OF THE EXHIBIT.

10:19AM 4 DO YOU SEE THAT THIS IS A COVER LETTER FROM

10:19AM 5 BLACK DIAMOND VENTURES TO SOME OF ITS INVESTORS?

10:19AM 6 A. YES.

10:19AM 7 Q. CAN YOU EXPLAIN FOR US WHAT THE PURPOSE OF THIS LETTER

10:19AM 8 WAS, IF YOU RECALL?

10:19AM 9 A. YES, IT -- AS I'VE SAID BEFORE, THEY WERE NOT VERY

10:19AM 10 TRANSPARENT WITH THE INFORMATION AND FINANCIALS, PATENT

10:19AM 11 PORTFOLIO, ET CETERA, ET CETERA, SO WE WANTED TO MAKE SURE THAT

10:20AM 12 OUR INVESTORS WERE CLEAR EYED IN UNDERSTANDING THAT THAT WAS

10:20AM 13 THE CASE.

10:20AM 14 Q. AND WHEN YOU SAY, "THEY WERE NOT VERY TRANSPARENT," ARE

10:20AM 15 YOU REFERRING TO MS. HOLMES AND THERANOS?

10:20AM 16 A. YES.

10:20AM 17 Q. AND THIS STEP OF SENDING OUT THIS KIND OF DISCLOSURE OR

10:20AM 18 DOCUMENT TO BDT INVESTORS, WAS THIS SOMETHING THAT COMMONLY

10:20AM 19 HAPPENED WITH INVESTMENTS AT BLACK DIAMOND VENTURES?

10:20AM 20 A. NO.

10:20AM 21 Q. LET'S LOOK AT PAGE 6 OF THE EXHIBIT.

10:20AM 22 DO YOU SEE HERE WE'RE LOOKING AT THE DISCLOSURE THAT WAS

10:20AM 23 SENT TO THE BDT INVESTORS?

10:20AM 24 A. YES.

10:20AM 25 Q. LET'S LOOK AT PAGE 8 OF THIS SAME DOCUMENT. LET'S ZOOM IN

10:20AM 1 ON THE BOTTOM PORTION OF THE PAGE WHICH IS REPRESENTATIONS,
10:21AM 2 WARRANTIES, DELIVERABLES, AND COVENANTS.

10:21AM 3 DO YOU SEE THERE THAT THERE IS SOME LANGUAGE THAT SAYS
10:21AM 4 THAT "THE PURCHASE AGREEMENT DOES NOT PROVIDE MANY OF THE
10:21AM 5 STANDARD REPRESENTATIONS, WARRANTIES AND DELIVERABLES WE WOULD
10:21AM 6 EXPECT TO SEE IN AN INVESTMENT OF THIS NATURE, AND THOSE THAT
10:21AM 7 HAVE BEEN PROVIDED ARE SERIOUSLY CURTAILED."

10:21AM 8 DO YOU SEE THAT?

10:21AM 9 A. YES.

10:21AM 10 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS IN PLAIN LANGUAGE?

10:21AM 11 A. THAT THE INFORMATION THAT WE WOULD HAVE EXPECTED TO HAVE,
10:21AM 12 WE DID NOT HAVE, AND SO WE WANTED TO DISCLOSE AND LET OUR
10:21AM 13 INVESTORS KNOW THAT WE DID NOT HAVE THAT INFORMATION.

10:21AM 14 Q. WOULD BLACK DIAMOND VENTURES HAVE PREFERRED TO HAVE HAD
10:21AM 15 MORE DETAILED INFORMATION FROM THERANOS PRIOR TO MAKING THAT
10:21AM 16 DECEMBER 2013 INVESTMENT?

10:21AM 17 A. YES.

10:21AM 18 Q. LET'S LOOK AT THE FOLLOWING PAGE. AND THERE'S A LIST OF
10:21AM 19 THINGS THAT THE PURCHASE AGREEMENT DOES NOT CONTAIN.

10:22AM 20 AND DO YOU SEE THAT THAT INCLUDES, FOR EXAMPLE, UNDER ITEM
10:22AM 21 3 -- OH, SORRY, AT THE TOP OF THE PAGE.

10:22AM 22 "COMPLIANCE CERTIFICATE OF AN OFFICER OF THERANOS,
10:22AM 23 CERTIFYING TO THE TRUTH AND CORRECTNESS OF THERANOS'S
10:22AM 24 REPRESENTATIONS AND WARRANTIES IN THE PURCHASE AGREEMENT."

10:22AM 25 DO YOU SEE THAT?

10:22AM 1 A. YES.

10:22AM 2 Q. AND THEN THERE IS SOME ADDITIONAL LANGUAGE BELOW THAT
10:22AM 3 UNDER B THAT SAYS, "THE AMENDED AND RESTATED INVESTORS' RIGHTS
10:22AM 4 AGREEMENT LACKS REPRESENTATIONS, WARRANTIES, AND COVENANTS
10:22AM 5 TYPICAL FOR AN INVESTMENT OF THIS TYPE."

10:22AM 6 DO YOU SEE THAT?

10:22AM 7 A. YES.

10:22AM 8 Q. AND IS THAT A SIMILAR DISCLOSURE ABOUT THE LACK OF
10:22AM 9 INFORMATION THAT HAD COME FROM THERANOS?

10:22AM 10 A. CORRECT.

10:22AM 11 Q. GIVEN THAT YOU WOULD HAVE WANTED MORE INFORMATION FROM
10:23AM 12 THERANOS PRIOR TO THIS INFORMATION, AND THE FACT THAT YOU TOOK
10:23AM 13 THE STEP OF SENDING THIS OUT TO YOUR INVESTORS, LET ME ASK YOU,
10:23AM 14 WHAT MADE YOU PERSONALLY COMFORTABLE WITH MOVING FORWARD WITH
10:23AM 15 THIS INVESTMENT AT THIS TIME?

10:23AM 16 A. MY RELATIONSHIP WITH ELIZABETH. I BELIEVE SHE WAS
10:23AM 17 TRUTHFUL AND EARNEST IN WHAT SHE WAS TRYING TO ACCOMPLISH,
10:23AM 18 NUMBER ONE;

10:23AM 19 AND, SECONDLY, THIS WAS ALL COINCIDENT WITH WALGREENS
10:23AM 20 GOING TO ROLL OUT THE TECHNOLOGY, AND YOU WOULD HOPE AND DREAM
10:23AM 21 A COMPANY THE SIZE OF WALGREENS WOULD WANT TO ROLL OUT YOUR
10:23AM 22 TECHNOLOGY.

10:23AM 23 SO THAT WAS EXTREMELY VALIDATING.

10:23AM 24 Q. DID THIS INVESTMENT BY BDT RELY MORE ON PERSONAL TRUST AND
10:23AM 25 THE HONESTY OF THE CEO THAN THE TYPICAL INVESTMENT THAT YOU

10:23AM 1 MADE?

10:23AM 2 MR. COOPERSMITH: OBJECTION. LEADING.

10:23AM 3 THE COURT: SUSTAINED.

10:24AM 4 BY MR. BOSTIC:

10:24AM 5 Q. HOW DID THIS INVESTMENT COMPARE TO PREVIOUS INVESTMENTS
10:24AM 6 THAT YOU HAD MADE IN TERMS OF HOW MUCH YOU WERE RELYING ON THE
10:24AM 7 HONESTY OF THE CEO?

10:24AM 8 A. WELL, YOU HOPE YOU'RE RELYING ON THE HONESTY OF ALL OF THE
10:24AM 9 CEO'S AND FOUNDERS THAT YOU'RE WORKING WITH, IN PARTICULAR AS
10:24AM 10 IT RELATES TO ELIZABETH AND THERANOS, BECAUSE THE INFORMATION
10:24AM 11 WAS NOT READILY AVAILABLE. YOU REALLY HAD TO HAVE A LOT OF
10:24AM 12 TRUST IN HER AND THE OTHERS THAT YOU SPOKE WITH.

10:24AM 13 Q. WE CAN SET THIS EXHIBIT ASIDE.

10:24AM 14 LET ME ASK YOU, JUST SO WE'RE CLEAR ABOUT THE SOURCES OF
10:24AM 15 INFORMATION THAT YOU HAD WHEN YOU INVESTED.

10:24AM 16 YOU TESTIFIED ABOUT YOUR UNCLE, DON LUCAS, AND RECEIVING
10:24AM 17 INFORMATION FROM HIM ABOUT THERANOS; IS THAT CORRECT?

10:24AM 18 A. CORRECT.

10:24AM 19 Q. AND CAN YOU REMIND US WHEN THAT STOPPED, WHEN HE WAS NO
10:24AM 20 LONGER A REGULAR SOURCE OF INFORMATION FOR YOU ABOUT THE
10:24AM 21 COMPANY?

10:24AM 22 A. I'D SAY COMPLETELY BY EARLY 2013, BUT CERTAINLY ALSO
10:25AM 23 DURING 2012.

10:25AM 24 Q. SO FAIR TO SAY AT LEAST A YEAR OR APPROXIMATELY A YEAR
10:25AM 25 BEFORE --

10:25AM 1 A. YES.

10:25AM 2 Q. -- YOU MADE THE 2013 INVESTMENT?

10:25AM 3 A. YES.

10:25AM 4 Q. SO IN THE YEAR ACTUALLY LEADING UP TO YOUR INVESTMENT, DID

10:25AM 5 YOU GET SOME INFORMATION FROM THE THERANOS WEBSITE THAT YOU

10:25AM 6 RELIED ON?

10:25AM 7 A. YES.

10:25AM 8 Q. HOW ABOUT NEWS ARTICLES? DID THOSE PLAY A ROLE IN

10:25AM 9 EDUCATING YOU AND HELPING YOU EVALUATE YOUR INVESTMENT

10:25AM 10 DECISION?

10:25AM 11 A. YES.

10:25AM 12 Q. YOU TALKED ABOUT A VISIT TO THERANOS HEADQUARTERS.

10:25AM 13 DO YOU RECALL THAT VISIT?

10:25AM 14 A. I'VE BEEN THERE A FEW TIMES. I'M NOT SURE WHICH VISIT --

10:25AM 15 Q. FAIR ENOUGH.

10:25AM 16 A. -- YOU'RE TALKING ABOUT.

10:25AM 17 Q. LET'S TALK ABOUT DURING THE SECOND HALF OF 2013. DID YOU

10:26AM 18 VISIT THERANOS ONE OR MORE TIMES DURING THAT TIME PERIOD?

10:26AM 19 A. I WOULD EXPECT SO, YES.

10:26AM 20 Q. AND DO YOU REMEMBER ON YOUR VISIT BEING SHOWN THE

10:26AM 21 COMPANY'S TECHNOLOGY?

10:26AM 22 A. YES.

10:26AM 23 Q. DO YOU RECALL WHO GAVE YOU THE TOUR OR WHO WAS SHOWING YOU

10:26AM 24 AROUND DURING YOUR VISIT OR VISITS IN THE LATTER HALF OF 2013?

10:26AM 25 A. I WOULD EXPECT THAT IT WAS ELIZABETH AND/OR ONE OF THE LAB

10:26AM 1 DIRECTORS.

10:26AM 2 Q. AND DURING YOUR VISITS TO THE COMPANY, YOU TESTIFIED THAT
10:26AM 3 YOU WERE SHOWN THE THERANOS ANALYZER AND YOU DESCRIBED ITS
10:26AM 4 SIZE.

10:26AM 5 DO YOU RECALL THAT?

10:26AM 6 A. YES.

10:26AM 7 Q. WERE YOU EVER SHOWN A THIRD PARTY NON-THERANOS BLOOD
10:26AM 8 ANALYZER DURING YOUR VISITS TO THE COMPANY?

10:27AM 9 A. NO.

10:27AM 10 Q. YOU ALSO TESTIFIED THAT YOU WERE IN REGULAR CONTACT WITH
10:27AM 11 MS. HOLMES IN DISCUSSING THE COMPANY'S TECHNOLOGY AND BUSINESS
10:27AM 12 LEADING UP TO YOUR INVESTMENT; IS THAT RIGHT?

10:27AM 13 A. YES.

10:27AM 14 Q. DID THE STATEMENTS THAT SHE WAS MAKING TO YOU AT THAT TIME
10:27AM 15 MATTER TO YOUR THOUGHT PROCESS ABOUT WHETHER TO INVEST IN THE
10:27AM 16 COMPANY OR NOT?

10:27AM 17 A. YES.

10:27AM 18 Q. DURING THAT TIME PERIOD, DID YOU EVER HAVE A CONVERSATION
10:27AM 19 WITH SUNNY BALWANI?

10:27AM 20 A. NO.

10:27AM 21 Q. DO YOU RECALL EVER MEETING SUNNY BALWANI?

10:27AM 22 A. NO.

10:27AM 23 Q. IF I COULD ASK YOU TO LOOK AT TAB 5837 IN YOUR BINDER.

10:27AM 24 DURING YOUR CONVERSATIONS WITH MS. HOLMES, DO YOU RECALL
10:28AM 25 HER EVER TALKING ABOUT SUNNY BALWANI?

10:28AM 1 A. I DON'T BELIEVE SO.

10:28AM 2 Q. LOOKING AT 5837, DO YOU SEE THAT THAT'S AN EMAIL BETWEEN
10:28AM 3 MS. QUINTANA AND THERANOS, CC'ING YOU, RELATING TO YOUR
10:28AM 4 DECEMBER INVESTMENT?

10:28AM 5 A. IS THAT RESPONDING FROM ANA TO THERANOS, IS THAT WHAT
10:28AM 6 YOU'RE SAYING?

10:28AM 7 Q. YES. DO YOU SEE THAT?

10:28AM 8 A. YES.

10:28AM 9 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5837.

10:28AM 10 MR. COOPERSMITH: NO OBJECTION.

10:28AM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:28AM 12 (GOVERNMENT'S EXHIBIT 5837 WAS RECEIVED IN EVIDENCE.)

10:28AM 13 BY MR. BOSTIC:

10:28AM 14 Q. AND DO YOU SEE ABOUT A THIRD OF THE WAY DOWN THE PAGE, OR
10:28AM 15 MAYBE A QUARTER, THERE'S AN EMAIL FROM MS. QUINTANA TO
10:28AM 16 THERANOS, CC'ING YOU ON DECEMBER 23RD?

10:29AM 17 A. YES.

10:29AM 18 Q. AND IT TALKS ABOUT THE MECHANICS OF THE INVESTMENT AND
10:29AM 19 WHAT ENTITIES WILL BE INVOLVED; RIGHT?

10:29AM 20 A. YES.

10:29AM 21 Q. AND LET'S LOOK ABOVE THAT.

10:29AM 22 AND DO YOU SEE, WHILE THAT EMAIL WAS SENT TO THERANOS,
10:29AM 23 MR. BALWANI THEN FORWARD THE EMAIL TO MS. HOLMES THE FOLLOWING
10:29AM 24 DAY.

10:29AM 25 DO YOU SEE THAT?

10:29AM 1 A. YES.

10:29AM 2 Q. AND HIS MESSAGE IS, "JUST MAKING SURE YOU SAW THIS..."

10:29AM 3 DO YOU SEE THAT?

10:29AM 4 A. YES.

10:29AM 5 Q. AND IF WE LOOK AT THE BOTTOM OF THIS PAGE, DO YOU SEE THAT

10:29AM 6 THERE'S A MESSAGE FROM THERANOS, AND WE SEE THAT THE EMAIL

10:29AM 7 ADDRESS THERE IS SHAREHOLDERINFO@THERANOS.COM?

10:29AM 8 A. YES.

10:29AM 9 Q. IF I COULD ASK YOU TO TURN TO 5836.

10:30AM 10 AND AT 5836, DO YOU SEE ANOTHER SIMILAR EMAIL INCLUDING

10:30AM 11 MS. QUINTANA, THAT THERANOS ADDRESS, MR. BALWANI, AND

10:30AM 12 MS. HOLMES?

10:30AM 13 A. YES.

10:30AM 14 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5836.

10:30AM 15 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:30AM 16 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:30AM 17 (GOVERNMENT'S EXHIBIT 5836 WAS RECEIVED IN EVIDENCE.)

10:30AM 18 BY MR. BOSTIC:

10:30AM 19 Q. MR. LUCAS, DO YOU SEE HERE THAT WE HAVE ANOTHER EMAIL FROM

10:30AM 20 MS. QUINTANA TO THAT SHAREHOLDER INFO ADDRESS AT THERANOS?

10:30AM 21 A. YES.

10:30AM 22 Q. AND THIS IS ON DECEMBER 30TH, 2013; IS THAT RIGHT?

10:30AM 23 A. YES.

10:30AM 24 Q. AND THEN IF WE LOOK ABOVE THAT, WE SEE THAT MR. BALWANI

10:30AM 25 FORWARDS THAT EMAIL TO THE THERANOS EMAIL ADDRESS DIRECTLY TO

10:30AM 1 ELIZABETH HOLMES.

10:30AM 2 DO YOU SEE THAT?

10:30AM 3 A. YES.

10:30AM 4 Q. AROUND THIS TIME PERIOD, DO YOU RECALL MS. HOLMES EVER

10:31AM 5 MENTIONING TO YOU WHETHER MR. BALWANI EVER HAD A ROLE IN

10:31AM 6 CONNECTION WITH YOUR INVESTMENT?

10:31AM 7 A. I DON'T RECALL.

10:31AM 8 Q. OKAY. WE CAN SET THAT ASIDE.

10:31AM 9 I'D LIKE TO ASK YOU JUST A COUPLE OF QUESTIONS ABOUT YOUR
10 UNDERSTANDING OF THE COMPANY'S STATUS AT THE TIME THAT YOU MADE
11 YOUR INVESTMENT.

10:31AM 12 WE TALKED ABOUT THE SOURCES OF INFORMATION THAT YOU HAD.

10:31AM 13 BUT LET ME ASK YOU, AT THE TIME THAT YOU INVESTED IN THE
14 COMPANY, WHAT DID YOU UNDERSTAND ITS TECHNOLOGY TO BE?

10:31AM 15 A. WE'RE TALKING IN 2013?

10:31AM 16 Q. YES, IN LATE 2013.

10:31AM 17 A. YEAH. THAT IT WAS FULLY FUNCTIONING, CAPABLE OF DOING, AS
18 I SAID EARLIER, DOING DOZENS OF TESTS, AND THIS WAS ALL BASED
19 ON A FEW DROPS OF BLOOD.

10:32AM 20 Q. AND WHEN YOU WERE UNDERSTANDING THE COMPANY'S TECHNOLOGY,
21 DID YOUR UNDERSTANDING INVOLVE A SINGLE ANALYZER THAT WAS BEING
22 USED OR A GROUP OF DIFFERENT KINDS OF ANALYZERS?

10:32AM 23 A. I BELIEVE MY UNDERSTANDING WAS THAT IT WAS ONE CARTRIDGE
24 GOES INTO ONE ANALYZER AND, SURE, YOU COULD HAVE MULTIPLE
25 ANALYZERS, BUT EACH ANALYZER WOULD HANDLE ONE SAMPLE.

10:32AM 1 Q. AROUND THE TIME OF YOUR 2013 INVESTMENT, WOULD IT HAVE
10:32AM 2 SURPRISED YOU TO HEAR THAT THE THERANOS ANALYZER YOU SAW WAS
10:32AM 3 NEVER USED FOR MORE THAN A DOZEN TESTS IN THE CLINICAL LAB?
10:32AM 4 A. PLEASE SAY AGAIN.
10:32AM 5 Q. SURE.
10:32AM 6 WOULD IT HAVE BEEN NEW INFORMATION FOR YOU THAT IN 2013,
10:33AM 7 THERANOS COULD USE ITS EDISON ANALYZER FOR FEWER THAN A DOZEN
10:33AM 8 TESTS IN THE LAB?
10:33AM 9 A. YES, THAT WOULD HAVE BEEN SURPRISING.
10:33AM 10 Q. WOULD THAT HAVE BEEN INCONSISTENT WITH THE UNDERSTANDING
10:33AM 11 THAT YOU HAD FOLLOWING YOUR CONVERSATIONS WITH MS. HOLMES?
10:33AM 12 A. YES.
10:33AM 13 Q. HOW ABOUT PARTNERSHIPS THAT THE COMPANY HAD? WHEN YOU
10:33AM 14 INVESTED IN 2013, WERE YOU AWARE OF THE PARTNERSHIP WITH
10:33AM 15 WALGREENS?
10:33AM 16 A. YES.
10:33AM 17 Q. AND WAS THE STATUS OF THAT PARTNERSHIP RELEVANT TO YOUR
10:33AM 18 VIEW OF THE COMPANY'S TECHNOLOGY?
10:33AM 19 A. PARAMOUNT.
10:33AM 20 Q. AND WHY WAS THAT?
10:33AM 21 A. BECAUSE WALGREENS WAS GETTING READY TO ROLL IT OUT
10:33AM 22 NATIONALLY, AND THAT WAS VERY EXCITING AND VALIDATING FOR THE
10:33AM 23 COMPANY.
10:33AM 24 Q. STILL ON THE SUBJECT OF PARTNERSHIPS.
10:33AM 25 DID YOU HAVE ANY CONVERSATIONS WITH MS. HOLMES ABOUT THE

10:33AM 1 COMPANY'S WORK WITH THE U.S. MILITARY OR DEPARTMENT OF DEFENSE?

10:34AM 2 A. YES.

10:34AM 3 Q. AND WHAT DID MS. HOLMES TELL YOU ABOUT THAT?

10:34AM 4 A. THAT IT WAS VERY EXCITING, THAT THE TECHNOLOGY WAS BEING

10:34AM 5 USED IN THE MIDDLE EAST AND IN PARTICULAR IN THE -- ON THE

10:34AM 6 BATTLEFIELD.

10:34AM 7 Q. AND YOU SAID THAT WAS EXCITING. WHY WAS THAT EXCITING FOR

10:34AM 8 YOU AS AN INVESTOR?

10:34AM 9 A. THAT, AGAIN, THE TECHNOLOGY WAS OPERATING, WORKING, AND

10:34AM 10 THAT THE MILITARY FOUND IT VERY HELPFUL FOR THEM.

10:34AM 11 AND SO OBVIOUSLY IF THEY THOUGHT IT WAS GOOD, POTENTIALLY

10:34AM 12 THEY WOULD ORDER -- PLACE A NICE ORDER FOR A LOT OF THE

10:34AM 13 TECHNOLOGY, AND ANALYZERS, AND SO FORTH.

10:34AM 14 Q. THAT TOPIC, THAT BEING THE MILITARY'S USE OF THE THERANOS

10:34AM 15 ANALYZER, WAS THAT SOMETHING THAT YOU DISCUSSED WITH MS. HOLMES

10:34AM 16 ONCE OR MULTIPLE TIMES?

10:35AM 17 A. MULTIPLE TIMES.

10:35AM 18 Q. HOW ABOUT THE COMPANY'S FINANCIAL HEALTH?

10:35AM 19 BASED ON YOUR CONVERSATIONS WITH MS. HOLMES, AND THE

10:35AM 20 PUBLIC INFORMATION THAT YOU HAD READ, AND THE COMMUNICATIONS

10:35AM 21 FROM THERANOS, WHAT WAS YOUR UNDERSTANDING ABOUT HOW THE

10:35AM 22 COMPANY WAS DOING FINANCIALLY?

10:35AM 23 A. AND AGAIN, THIS IS THE 2013 TIMEFRAME?

10:35AM 24 Q. YES.

10:35AM 25 A. CLEARLY THE COMPANY NEEDED TO RAISE MONEY TO SCALE UP AND

10:35AM 1 FOR THE INFRASTRUCTURE AND ROLLOUT. SO WE CERTAINLY UNDERSTOOD
10:35AM 2 THAT.

10:35AM 3 AND AS I SAID EARLIER, A LARGE AMOUNT OF MONEY WAS BEING
10:35AM 4 RAISED, AND AT THAT TIME MY UNDERSTANDING WAS THAT AT LEAST A
10:35AM 5 COUPLE HUNDRED MILLION DOLLARS.

10:35AM 6 Q. AND THE FACT THAT THAT MONEY WAS BEING RAISED FOR, AS YOU
10:35AM 7 SAID, SCALING, HOW DID THAT AFFECT YOUR VIEW OF THE INVESTMENT
10:35AM 8 AND THE RISK OF THE INVESTMENT?

10:35AM 9 A. AGAIN, VERY EXCITING. WE WERE ROLLING OUT, AND WE ARE
10:36AM 10 GOING TO HAVE SOME BIG REVENUE.

10:36AM 11 Q. AFTER YOUR 2013 INVESTMENT, DID YOU CONTINUE TO STAY IN
10:36AM 12 CONTACT WITH MS. HOLMES ABOUT THE COMPANY?

10:36AM 13 A. YES.

10:36AM 14 Q. AND DID YOU CONTINUE TO SOMETIMES GET COMMUNICATIONS FROM
10:36AM 15 MS. HOLMES AND THERANOS?

10:36AM 16 A. YES.

10:36AM 17 Q. LET ME ASK YOU TO LOOK AT TAB 1770.

10:36AM 18 DO YOU SEE AT 1770 THERE'S AN EMAIL FROM THERANOS TO
10:36AM 19 THERANOS SHAREHOLDERS DATED JUNE 12TH, 2014?

10:36AM 20 A. YES.

10:36AM 21 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1770.

10:37AM 22 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:37AM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:37AM 24 (GOVERNMENT'S EXHIBIT 1770 WAS RECEIVED IN EVIDENCE.)

10:37AM 25 BY MR. BOSTIC:

10:37AM 1 Q. SO WE SEE THIS EMAIL IN JUNE OF 2014; IS THAT CORRECT?

10:37AM 2 A. YES.

10:37AM 3 Q. AND WE'VE REDACTED EMAIL ADDRESSES EXCEPT FOR YOURS AND
10:37AM 4 MS. HOLMES; IS THAT CORRECT?

10:37AM 5 A. YES.

10:37AM 6 Q. AND LET'S LOOK AT PAGE 2.

10:37AM 7 AND DO YOU SEE HERE THAT THERE'S A MESSAGE FROM THERANOS
10:37AM 8 TO SHAREHOLDERS, SAYING IN THAT SECOND PARAGRAPH, "WITH THIS
10:37AM 9 EMAIL, WE'RE VERY PLEASED TO SHARE WITH YOU THIS MONTH'S
10:37AM 10 'FORTUNE' MAGAZINE COVER STORY."

10:37AM 11 IT SAYS, "'FORTUNE' DID IN-DEPTH RESEARCH TO UNDERSTAND
10:37AM 12 THE IMPACT OF OUR WORK" -- EXCUSE ME, "THE IMPACT OUR WORK WILL
10:37AM 13 HAVE ON THE WORLD, AND WE SELECTIVELY SHARED MORE OF OUR WORK
10:37AM 14 FOR THIS PIECE."

10:37AM 15 DO YOU SEE THAT?

10:37AM 16 A. YES.

10:37AM 17 Q. AND LET'S TURN THE PAGE TO PAGE 3.

10:37AM 18 AND DO YOU SEE THERE THAT THE EMAIL INCLUDES THE CONTENT
10:37AM 19 OF THIS ARTICLE FROM "FORTUNE" IN JUNE OF 2014?

10:38AM 20 A. YES.

10:38AM 21 Q. YES. AND DO YOU RECALL READING THIS ARTICLE WHEN IT CAME
10:38AM 22 OUT IN MID-JUNE OF 2014?

10:38AM 23 A. YES.

10:38AM 24 Q. AND DO YOU RECALL THAT THAT ARTICLE WAS POSITIVE ABOUT
10:38AM 25 THERANOS?

10:38AM 1 A. EXTREMELY.

10:38AM 2 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

10:38AM 3 THE COURT: YES.

10:38AM 4 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

10:38AM 5 MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.

10:38AM 6 THE COURT: YOU'LL HAVE CROSS-EXAMINATION,

10:38AM 7 MR. COOPERSMITH?

10:38AM 8 MR. COOPERSMITH: YES, YOUR HONOR.

10:38AM 9 THE COURT: FOLKS, WOULD YOU LIKE TO STAND UP NOW OR

10:38AM 10 TAKE A BRIEF BREAK NOW?

10:38AM 11 LET'S TAKE ABOUT 10 MINUTES, 15 MINUTE BREAK, AND THEN

10:38AM 12 WE'LL ENGAGE CROSS-EXAMINATION.

10:38AM 13 WE'LL BE BACK IN 15 MINUTES.

10:38AM 14 THE WITNESS: OKAY.

10:38AM 15 (RECESS FROM 10:38 A.M. UNTIL 11:10 A.M.)

11:10AM 16 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

11:10AM 17 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

11:10AM 18 OUR JURY IS PRESENT.

11:10AM 19 DO YOU HAVE CROSS-EXAMINATION, MR. COOPERSMITH?

11:10AM 20 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

11:10AM 21 MAY I REMOVE MY MASK?

11:10AM 22 THE COURT: YES, YES. OF COURSE.

11:10AM 23 MR. COOPERSMITH: THANK YOU.

11:10AM 24 ///

11:10AM 25 ///

11:10AM 1
11:10AM 2
11:10AM 3
11:10AM 4
11:10AM 5
11:10AM 6
11:10AM 7
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11:11AM 24
11:11AM 25

CROSS-EXAMINATION

BY MR. COOPERSMITH:

Q. GOOD MORNING. MR. LUCAS.

A. GOOD MORNING.

Q. I'M JEFF COOPERSMITH. I REPRESENT SUNNY BALWANI IN THIS CASE.

AND I'M GOING TO ASK YOU SOME QUESTIONS ABOUT YOUR EXPERIENCES THAT ARE RELEVANT TO THIS MATTER. OKAY?

A. SURE.

Q. THANK YOU.

SO JUST TO START OFF WITH, AND I THINK YOU TALKED ABOUT THIS ON DIRECT, BUT, IN FACT, YOU'VE NEVER MET MR. BALWANI?

A. CORRECT.

Q. AND YOU'VE NEVER HAD A CONVERSATION WITH MR. BALWANI?

A. NO.

Q. AND YOU -- IN FACT, IN THE COURTROOM TODAY, IS THIS THE FIRST TIME THAT YOU'VE EVER EVEN SEEN HIM?

A. YES.

Q. AND YOUR CONTACT AT THERANOS WAS PRIMARILY ELIZABETH HOLMES?

A. CORRECT.

Q. NOT MR. BALWANI?

A. THAT'S CORRECT.

Q. AND JUST TO BE ABSOLUTELY CLEAR, YOU NEVER SPOKE WITH MR. BALWANI BEFORE ANY INVESTMENT YOU MADE OR YOUR FIRM MADE IN

11:11AM 1 THERANOS?

11:11AM 2 A. NO.

11:11AM 3 Q. AND NOT BEFORE THE 2006 INVESTMENT?

11:11AM 4 A. NO.

11:11AM 5 Q. OR THE SECOND 2006 INVESTMENT?

11:11AM 6 A. NO.

11:11AM 7 Q. OR THE 2013 INVESTMENT?

11:11AM 8 A. NO.

11:11AM 9 Q. AND MR. BALWANI WAS NEVER ANNOUNCED AS BEING A PARTICIPANT

11:11AM 10 ON ANY PHONE CALL YOU WERE ON PERTAINING TO THERANOS?

11:11AM 11 A. NOT TO MY KNOWLEDGE.

11:11AM 12 Q. OR ANYTHING ELSE?

11:11AM 13 A. CORRECT.

11:11AM 14 Q. AND THERE'S NOTHING THAT MR. BALWANI EVER SAID OR DID THAT

11:11AM 15 INFLUENCED ANY OF YOUR DECISIONS TO INVEST IN THERANOS;

11:11AM 16 CORRECT?

11:11AM 17 A. CORRECT.

11:11AM 18 Q. OKAY. LET'S JUST PIVOT TO ELIZABETH HOLMES, WHO YOU DID

11:11AM 19 HAVE A RELATIONSHIP WITH; RIGHT?

11:12AM 20 A. YES, I HAD A -- SO I HAD BUSINESS RELATIONSHIP.

11:12AM 21 (LAUGHTER.)

11:12AM 22 BY MR. COOPERSMITH:

11:12AM 23 Q. I DIDN'T MEAN TO IMPLY ANYTHING DIFFERENT.

11:12AM 24 A. SORRY.

11:12AM 25 Q. A BUSINESS RELATIONSHIP?

11:12AM 1 A. YES.

11:12AM 2 Q. AND YOU MET ELIZABETH HOLMES IN 2006?

11:12AM 3 A. PROBABLY SOONER.

11:12AM 4 Q. BEFORE 2006?

11:12AM 5 A. YES.

11:12AM 6 Q. OKAY. AND YOU MET HER BECAUSE YOUR UNCLE, DON LUCAS,

11:12AM 7 WAS --

11:12AM 8 A. MADE THE INTRODUCTION, YES.

11:12AM 9 Q. HE MADE THE INTRODUCTION?

11:12AM 10 A. YES.

11:12AM 11 Q. AND YOUR UNCLE, DON LUCAS, WAS ONE OF THE EARLY INVESTORS

11:12AM 12 IN THERANOS?

11:12AM 13 A. CORRECT.

11:12AM 14 Q. AND EVENTUALLY HE BECAME A MEMBER OF THE BOARD OF

11:12AM 15 DIRECTORS AT THERANOS?

11:12AM 16 A. THAT'S RIGHT.

11:12AM 17 Q. AND HE EVEN BECAME THE CHAIRMAN OF THE BOARD OF DIRECTORS?

11:12AM 18 A. YES.

11:12AM 19 Q. AND YOUR UNCLE, DON LUCAS, HE HAS A REPUTATION IN THE

11:12AM 20 INVESTMENT COMMUNITY HERE IN SILICON VALLEY; IS THAT RIGHT?

11:12AM 21 A. YES. HE HAD A GREAT CAREER.

11:12AM 22 Q. RIGHT.

11:12AM 23 A. YES.

11:13AM 24 Q. AND CAN YOU JUST BRIEFLY DESCRIBE WHAT THAT WAS?

11:13AM 25 A. HE, EARLY ON, WAS WITH THE FIRST VENTURE CAPITAL FIRM ON

11:13AM 1 THE WEST COAST, WHICH WAS CALLED DRAPER, GAITHER & ANDERSON.

11:13AM 2 AND AFTER THAT, HE WENT OUT ON HIS OWN AND WAS A PRIVATE
11:13AM 3 INVESTOR.

11:13AM 4 Q. OKAY. AND HE INVESTED IN SOME NOW FAMOUS SILICON VALLEY
11:13AM 5 COMPANIES?

11:13AM 6 A. YES.

11:13AM 7 Q. AND ONE OF THEM WAS ORACLE?

11:13AM 8 A. YES.

11:13AM 9 Q. AND THAT YOU CONSIDERED YOUR UNCLE, DON LUCAS, A SAVVY
11:13AM 10 INVESTOR?

11:13AM 11 A. YES.

11:13AM 12 Q. ONE OF THE BEST?

11:13AM 13 A. AS I SAID, HE HAD A GREAT CAREER, YEAH.

11:13AM 14 Q. AND A LOT OF THINGS THAT YOU PRACTICED IN YOUR OWN CAREER,
11:13AM 15 YOU LEARNED FROM DON LUCAS?

11:13AM 16 A. CORRECT.

11:13AM 17 Q. NOW, GOING BACK TO MS. HOLMES, WHEN YOU MET HER AND DURING
11:13AM 18 THE TIME THAT YOU WERE IN A BUSINESS RELATIONSHIP WITH HER --

11:14AM 19 A. (LAUGHTER.)

11:14AM 20 Q. YOU FOUND HER TO BE ARTICULATE?

11:14AM 21 A. ABSOLUTELY.

11:14AM 22 Q. ENGAGING?

11:14AM 23 A. YES.

11:14AM 24 Q. GENERALLY IMPRESSIVE?

11:14AM 25 A. VERY IMPRESSIVE.

11:14AM 1 Q. VERY HARD WORKING?

11:14AM 2 A. VERY HARD WORKING.

11:14AM 3 Q. AND VERY DRIVEN TO ACCOMPLISH THE GOALS THAT SHE HAD SET

11:14AM 4 FOR HERSELF?

11:14AM 5 A. ABSOLUTELY.

11:14AM 6 Q. AND THAT YOU BELIEVED THAT SHE HAD A WONDERFUL VISION FOR

11:14AM 7 THE COMPANY THAT ULTIMATELY BECAME THERANOS; CORRECT?

11:14AM 8 A. YES.

11:14AM 9 Q. AND YOU'RE AWARE THAT YOUR UNCLE, DON LUCAS, HAD A SIMILAR

11:14AM 10 OPINION OF HER?

11:14AM 11 A. YES.

11:14AM 12 Q. AND WHEN YOU MAKE INVESTMENTS, YOU PUT A LOT OF FAITH IN

11:14AM 13 THE FOUNDERS OF A COMPANY?

11:14AM 14 A. YES. THAT WAS ONE OF HIS PRIMARY TENETS WAS YOU'RE

11:14AM 15 INVESTING IN THE PEOPLE.

11:14AM 16 Q. OKAY. AND ALSO YOU FOUND MS. HOLMES VERY PASSIONATE ABOUT

11:14AM 17 WHAT SHE DID?

11:14AM 18 A. YES.

11:14AM 19 Q. AND SINCERE?

11:14AM 20 A. YES.

11:14AM 21 Q. AND THAT WAS ANOTHER REASON WHY YOU WERE COMFORTABLE WITH

11:14AM 22 YOUR INVESTMENTS --

11:14AM 23 A. YES.

11:14AM 24 Q. -- AND INVOLVEMENT WITH THERANOS?

11:14AM 25 A. YES.

11:15AM 1 Q. YES?

11:15AM 2 A. YES.

11:15AM 3 Q. OKAY. PIVOTING TO ANOTHER PERSON.

11:15AM 4 YOU ALSO KNEW OF A STANFORD PROFESSOR NAMED

11:15AM 5 CHANNING ROBERTSON?

11:15AM 6 A. YES.

11:15AM 7 Q. AND YOU'VE MET DR. ROBERTSON?

11:15AM 8 A. I HAVE.

11:15AM 9 Q. AND YOU UNDERSTAND THAT DR. ROBERTSON HAD A LONG AND

11:15AM 10 DISTINGUISHED CAREER AT STANFORD UNIVERSITY?

11:15AM 11 A. YES.

11:15AM 12 Q. AND HE WAS IN THE CHEMICAL ENGINEERING DEPARTMENT?

11:15AM 13 A. YES.

11:15AM 14 Q. AND, IN FACT, AT ONE POINT HE HAD BEEN A DEAN AT STANFORD?

11:15AM 15 A. I, I DON'T KNOW, BUT, YES.

11:15AM 16 Q. AND YOU UNDERSTAND THAT THERE WAS A CONNECTION BETWEEN

11:15AM 17 MS. HOLMES AND PROFESSOR ROBERTSON AT STANFORD?

11:15AM 18 A. YES.

11:15AM 19 Q. AND YOU'VE MET PROFESSOR ROBERTSON; RIGHT?

11:15AM 20 A. MAYBE A COUPLE OF TIMES, YES.

11:15AM 21 Q. OKAY. AND, IN FACT, YOU MET HIM IN THE CONTEXT OF

11:15AM 22 THERANOS; CORRECT?

11:15AM 23 A. THAT WOULD HAVE BEEN THE ONLY REASON.

11:15AM 24 Q. RIGHT.

11:15AM 25 AND YOU HAD A DISCUSSION WITH DR. ROBERTSON ABOUT

11:16AM 1 THERANOS'S TECHNOLOGY?

11:16AM 2 A. YES.

11:16AM 3 Q. AND DR. ROBERTSON TOLD YOU THAT --

11:16AM 4 MR. BOSTIC: OBJECTION. HEARSAY IF IT'S BEING
11:16AM 5 OFFERED FOR THE TRUTH.

11:16AM 6 MR. COOPERSMITH: IT'S BEING OFFERED TO SHOW THE
11:16AM 7 INFORMATION THAT THE INVESTOR HAD GOING INTO THE INVESTMENTS.

11:16AM 8 THE COURT: FOR THE TRUTH OF THAT INFORMATION?

11:16AM 9 MR. COOPERSMITH: NO. JUST FOR NOTICE TO MR. LUCAS.

11:16AM 10 THE COURT: THAT HE RECEIVED INFORMATION FROM THE
11:16AM 11 DOCTOR?

11:16AM 12 MR. COOPERSMITH: YES, YOUR HONOR.

11:16AM 13 THE COURT: ALL RIGHT. THIS WILL BE ADMITTED NOT
11:16AM 14 FOR THE TRUTH OF THE MATTER ASSERTED, LADIES AND GENTLEMEN, BUT
11:16AM 15 JUST AS TO THE ISSUE OF INFORMATION PROVIDED IN REGARDS TO THIS
11:16AM 16 INVESTMENT BY MR. LUCAS.

11:16AM 17 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:16AM 18 Q. SO LET ME STATE MY QUESTION AGAIN.

11:16AM 19 MR. LUCAS, DR. ROBERTSON TOLD YOU THAT THE THERANOS
11:16AM 20 TECHNOLOGY WORKED GREAT?

11:16AM 21 A. YES.

11:16AM 22 Q. AND THAT WAS IMPORTANT TO YOU; RIGHT?

11:16AM 23 A. YES, VALIDATING.

11:17AM 24 Q. BECAUSE DR. ROBERTSON WAS A SCIENTIST?

11:17AM 25 A. YES.

11:17AM 1 Q. AND SOMEONE WHO WOULD HAVE HAD SUPERIOR KNOWLEDGE TO YOUR
11:17AM 2 OWN ABOUT TECHNICAL MATTERS LIKE THAT?

11:17AM 3 A. YES.

11:17AM 4 Q. AND YOU UNDERSTAND THAT DR. ROBERTSON ALSO JOINED THE
11:17AM 5 THERANOS BOARD AT SOME POINT?

11:17AM 6 A. YES.

11:17AM 7 Q. AND HE WAS A MENTOR TO ELIZABETH HOLMES?

11:17AM 8 A. YES.

11:17AM 9 Q. OKAY. TURNING TO -- BACK TO MS. HOLMES FOR A MINUTE.
11:17AM 10 YOU WERE AWARE -- WELL, EVEN THOUGH YOU NEVER MET
11:17AM 11 MR. BALWANI, YOU HAD HEARD HIS NAME AT SOME POINT I'M ASSUMING?

11:17AM 12 A. YES. THE TIMEFRAME, I DON'T REMEMBER.

11:17AM 13 Q. OKAY. AND, IN FACT, YOU KNEW THAT MS. HOLMES HAD A
11:17AM 14 ROMANTIC RELATIONSHIP WITH A PERSON WHO HAD BECOME AN EXECUTIVE
11:17AM 15 AT THERANOS; CORRECT?

11:18AM 16 A. YES. AGAIN, I DON'T KNOW IN WHAT TIMEFRAME.

11:18AM 17 Q. OKAY. LET ME SHOW YOU SOMETHING THAT MIGHT REFRESH YOUR
11:18AM 18 MEMORY. IF YOU COULD TURN -- WELL, I BETTER HAND OUT THE
11:18AM 19 BINDERS FIRST.

11:18AM 20 A. OKAY.

11:18AM 21 MR. COOPERSMITH: MAY I, YOUR HONOR?

11:18AM 22 THE COURT: YES.

11:18AM 23 MR. COOPERSMITH: (HANDING.)

11:18AM 24 MAY I APPROACH THE WITNESS, YOUR HONOR?

11:18AM 25 THE COURT: YES.

11:18AM 1 MR. COOPERSMITH: (HANDING.)

11:19AM 2 Q. OKAY. MR. LUCAS, JUST TO SEE IF I CAN REFRESH YOUR MEMORY

11:19AM 3 ABOUT THIS PARTICULAR POINT, COULD YOU PLEASE FIND IN YOUR

11:19AM 4 BINDER THAT I'VE JUST HANDED YOU TAB 4873.

11:19AM 5 YOU FOUND IT?

11:19AM 6 A. OH, YES.

11:19AM 7 Q. THANK YOU. AND YOU KNOW WHO BRYAN TOLBERT IS?

11:19AM 8 A. YES.

11:19AM 9 Q. AND HE WAS ANOTHER INVESTOR IN THERANOS?

11:19AM 10 A. YES.

11:19AM 11 Q. AND HE WORKED FOR AN INDIVIDUAL NAMED CRAIG HALL; RIGHT?

11:19AM 12 A. CORRECT.

11:19AM 13 Q. AND CRAIG HALL IS THE HEAD OF THE HALL GROUP; CORRECT?

11:19AM 14 A. YES.

11:19AM 15 Q. AND MR. HALL IS ALSO AN INVESTOR WHO INVESTS IN VARIOUS

11:20AM 16 COMPANIES; RIGHT?

11:20AM 17 A. CORRECT.

11:20AM 18 Q. AND THROUGH HIS COMPANY, ALSO THERANOS?

11:20AM 19 A. YES.

11:20AM 20 Q. AND YOU UNDERSTAND MR. HALL AT ONE POINT WAS THE LARGEST

11:20AM 21 SHAREHOLDER IN AMERICAN AIRLINES; IS THAT RIGHT?

11:20AM 22 A. THAT'S AS I UNDERSTAND IT, YES.

11:20AM 23 Q. OKAY. SO YOU HAD A LOT OF CONVERSATIONS WITH

11:20AM 24 BRYAN TOLBERT OVER THE YEARS ABOUT THERANOS; RIGHT?

11:20AM 25 A. CORRECT.

11:20AM 1 Q. AND HE WAS -- YOU PROVIDED INFORMATION THAT YOU WERE
11:20AM 2 LEARNING TO MR. TOLBERT?

11:20AM 3 A. YES.

11:20AM 4 Q. AND THAT'S INFORMATION THAT YOU OBTAINED FROM YOUR UNCLE,
11:20AM 5 DON LUCAS?

11:20AM 6 A. YES, BACK WHEN HE WAS INVOLVED, YES.

11:20AM 7 Q. RIGHT. AND ALSO INFORMATION THAT YOU LEARNED FROM
11:20AM 8 ELIZABETH HOLMES?

11:20AM 9 A. CORRECT.

11:20AM 10 Q. RIGHT. IF YOU WOULD TURN IN THE DOCUMENT THAT I'VE JUST
11:20AM 11 REFERRED YOU TO, TO PAGE 18.

11:21AM 12 A. OKAY.

11:21AM 13 Q. AND YOU SEE THERE ARE SOME HEADINGS THAT CORRESPOND TO
11:21AM 14 DATES?

11:21AM 15 A. YES.

11:21AM 16 Q. AND DO YOU SEE THE ONE FOR JULY 14TH, 2011?

11:21AM 17 A. I DO.

11:21AM 18 Q. AND THERE ARE SEVERAL BULLET POINTS DOWN THERE?

11:21AM 19 A. YES.

11:21AM 20 Q. AND YOU SEE THE LAST OF THE BULLET POINTS IN THAT SECTION?

11:21AM 21 A. YES.

11:21AM 22 Q. AND WITHOUT READING IT OUT LOUD, JUST READING IT TO
11:21AM 23 YOURSELF, JUST TAKE A SECOND TO READ IT.

11:21AM 24 AND THEN I JUST -- I'M GOING TO ASK YOU IF THAT REFRESHES
11:21AM 25 YOUR MEMORY THAT YOU KNEW THAT ELIZABETH HOLMES HAD A BOYFRIEND

11:21AM 1 WHO WAS WORKING AT THERANOS?

11:21AM 2 A. THAT WOULD CERTAINLY -- IS THIS -- AND THESE ARE

11:21AM 3 CONVERSATIONS WITH CHRIS LUCAS AND THIS -- HOW DID THIS -- HOW

11:21AM 4 IS THIS -- WHO HAS PREPARED THIS.

11:22AM 5 Q. RIGHT. SO I'LL DO THE BEST I CAN TO ASK YOU A QUESTION

11:22AM 6 THAT MIGHT HELP.

11:22AM 7 A. OKAY.

11:22AM 8 Q. SO AS I SAID, YOU HAD A LOT OF DISCUSSIONS WITH

11:22AM 9 BRYAN TOLBERT; RIGHT?

11:22AM 10 A. YES.

11:22AM 11 Q. AND YOU UNDERSTAND THAT SOMETIMES WHEN YOU HAVE

11:22AM 12 CONVERSATIONS WITH PEOPLE, THEY TAKE NOTES?

11:22AM 13 A. YES.

11:22AM 14 Q. OKAY. AND I KNOW THAT THESE AREN'T YOUR NOTES. OKAY?

11:22AM 15 A. THAT'S FOR SURE.

11:22AM 16 Q. RIGHT. WE KNOW THAT.

11:22AM 17 BUT THE ONLY QUESTION I HAVE, AND YOU CAN ANSWER EITHER

11:22AM 18 WAY, BUT LOOKING AT THE SECTION THAT I JUST DIRECTED YOU TO --

11:22AM 19 A. YEAH.

11:22AM 20 Q. -- DOES THAT REFRESH YOUR RECOLLECTION THAT YOU TOLD

11:22AM 21 MR. TOLBERT THAT MS. HOLMES HAD A BOYFRIEND WHO HAD JOINED

11:22AM 22 THERANOS?

11:22AM 23 A. I HAVE NO REASON TO DISBELIEVE THAT THIS IS INACCURATE.

11:22AM 24 Q. OKAY. SO YOU THINK THAT --

11:22AM 25 A. THAT IT IS INDEED ACCURATE.

11:22AM 1 AND I DID AT SOME POINT THAT MR. BALWANI HAD SOLD HIS
11:23AM 2 COMPANY SUCCESSFULLY AND THAT HE WAS INVOLVED. I JUST DIDN'T
11:23AM 3 KNOW AT WHAT TIME PERIOD.

11:23AM 4 Q. SO IN THIS CASE NOT JUST A BUSINESS RELATIONSHIP, BUT
11:23AM 5 ANOTHER TYPE OF RELATIONSHIP; RIGHT?

11:23AM 6 A. YES. AND IT SEEMS THAT THIS IDENTIFIES THAT DATE.

11:23AM 7 Q. RIGHT.

11:23AM 8 SO IS IT THE CASE, MR. LUCAS, THAT YOU KNEW THAT
11:23AM 9 MS. HOLMES WAS IN A ROMANTIC RELATIONSHIP WITH ANOTHER PERSON
11:23AM 10 WHO JOINED THERANOS AS AN EXECUTIVE PRIOR TO YOUR 2013
11:23AM 11 INVESTMENT?

11:23AM 12 A. IT APPEARS TO BE THE CASE, YES.

11:23AM 13 Q. OKAY. THANK YOU.

11:23AM 14 LET'S JUST GO NOW TO A DIFFERENT SUBJECT, MR. LUCAS, WHICH
11:23AM 15 IS YOUR OWN INVESTMENT BACKGROUND. AND I WON'T BELABOR THE
11:23AM 16 POINT BECAUSE I KNOW YOU TALKED ABOUT THIS ON DIRECT.

11:23AM 17 BUT YOU'VE BEEN AN INVESTOR NOW FOR AT LEAST A COUPLE OF
11:24AM 18 DECADES; RIGHT?

11:24AM 19 A. YES.

11:24AM 20 Q. AND YOU CONSIDER YOURSELF A GOOD JUDGE OF INVESTMENTS, YOU
11:24AM 21 KNOW, AS BEST YOU CAN; RIGHT?

11:24AM 22 A. AS BEST YOU CAN, YEP.

11:24AM 23 Q. AND AS YOU SAID, IN YOUR VENTURE CAPITAL WORLD, YOU DON'T
11:24AM 24 EXPECT A WINNER EVERY TIME THAT YOU MAKE AN INVESTMENT; RIGHT?

11:24AM 25 A. CORRECT.

11:24AM 1 Q. THAT WOULD BE NICE?

11:24AM 2 A. IT WOULD BE GREAT.

11:24AM 3 Q. BUT THAT'S NOT REALITY?

11:24AM 4 A. CORRECT.

11:24AM 5 Q. AND SO THAT -- I THINK, JUST TO BE CLEAR, YOUR NUMBERS

11:24AM 6 THAT YOU GAVE DURING DIRECT, IS THAT IF YOU HAD TEN COMPANIES

11:24AM 7 THAT A VENTURE CAPITAL FIRM LIKE YOUR OWN INVESTED IN, IF THREE

11:24AM 8 OR FOUR WENT -- WERE COMPLETE ZEROS, THAT WOULD NOT BE

11:24AM 9 SURPRISING; RIGHT?

11:24AM 10 A. CORRECT.

11:24AM 11 Q. RIGHT.

11:24AM 12 SO YOU'RE JUST HOPING THAT THE FEW WINNERS THAT YOU'RE

11:24AM 13 ABLE TO PICK ARE PROFITABLE ENOUGH THAT IT OUTWEIGHS THE OTHER

11:24AM 14 ONES THAT ARE NOT; RIGHT?

11:24AM 15 A. THAT'S RIGHT.

11:24AM 16 Q. RIGHT.

11:24AM 17 AND YOU NEVER KNOW, RIGHT? EVERY INVESTMENT YOU GO INTO,

11:25AM 18 YOU HAVE HIGH HOPES THAT IT'S GOING TO BE A SUCCESS; RIGHT?

11:25AM 19 A. EVERY TIME.

11:25AM 20 Q. BECAUSE OTHERWISE YOU WOULDN'T DO IT?

11:25AM 21 A. THAT'S RIGHT.

11:25AM 22 Q. BUT YOU KNOW REALISTICALLY THAT THAT'S JUST NOT HOW IT'S

11:25AM 23 GOING TO TURN OUT?

11:25AM 24 A. THAT'S RIGHT.

11:25AM 25 Q. RIGHT.

11:25AM 1 SO YOU KNOW GOING IN THAT YOU'RE ALMOST GOING TO ALMOST
11:25AM 2 INDEFINITELY LOSE MONEY ON MOST OF THE INVESTMENTS THAT YOU
11:25AM 3 MAKE; RIGHT?

11:25AM 4 A. WELL, MAYBE NOT MOST, BUT, YES, THERE'S A HIGH
11:25AM 5 PROBABILITY, ESPECIALLY OF THOSE THAT ARE EARLY STAGE.

11:25AM 6 Q. OKAY. AND YOU HAVE A TEAM OF PEOPLE THAT WORK FOR YOU --
11:25AM 7 AND YOU SAID THAT YOU'RE THE MOST SENIOR PERSON AT
11:25AM 8 BLACK DIAMOND VENTURES?

11:25AM 9 A. YES.

11:25AM 10 Q. AND SO YOU HAVE A TEAM OF PEOPLE WHO HELP YOU EVALUATE
11:25AM 11 WHERE TO PLACE THE BETS --

11:25AM 12 A. YES.

11:25AM 13 Q. -- AND WHERE NOT TO PLACE THE BETS; RIGHT?

11:25AM 14 A. YES.

11:25AM 15 Q. OKAY. AND MS. QUINTANA IS ONE OF THOSE PEOPLE?

11:25AM 16 A. YES.

11:25AM 17 Q. AND THERE ARE OTHER PEOPLE, TOO, RIGHT?

11:25AM 18 A. YES. AND ADVISORS AND FRIENDS AND SO FORTH, YES.

11:26AM 19 Q. OKAY. NOW, IN CONNECTION WITH YOUR 2006 INVESTMENTS, YOU
11:26AM 20 RECEIVED FROM -- SOME WRITTEN MATERIALS FROM THERANOS; CORRECT?

11:26AM 21 A. YES.

11:26AM 22 Q. AND I THINK YOU DESCRIBED THEM AS RUDIMENTARY; IS THAT
11:26AM 23 RIGHT?

11:26AM 24 A. YES. IF I RECALL, IT WAS MAYBE 20 PAGES LONG DESCRIBING
11:26AM 25 THE TECHNOLOGY AND WHAT IT COULD POTENTIALLY BE USED FOR.

11:26AM 1 Q. OKAY. AND YOU RECALL THAT THERE WAS A PARTICULAR DOCUMENT
11:26AM 2 THAT YOU GOT THAT WENT THROUGH THE DIFFERENT VERSIONS OF THE
11:26AM 3 THERANOS DEVICE THAT MIGHT OCCUR OVER TIME?

11:26AM 4 A. I JUST DON'T RECALL.

11:26AM 5 Q. OKAY. AND JUST TO SEE IF I CAN HELP YOU. SO VERSIONS,
11:27AM 6 WHAT I MEAN BY THAT IS, YOU KNOW, EDISON 1.0, 2.0, 3.0, 4.0,
11:27AM 7 5.0 --

11:27AM 8 A. YES.

11:27AM 9 Q. -- THAT SORT OF THING?

11:27AM 10 A. YES.

11:27AM 11 AND LIKE OTHER TECHNOLOGY, MAKING SOMETHING FASTER,
11:27AM 12 SMALLER, MORE POWERFUL, FOLLOWING THE TYPICAL CURVE OF, YOU
11:27AM 13 KNOW, A LOT OF TECHNOLOGY.

11:27AM 14 Q. RIGHT.

11:27AM 15 A. YEAH.

11:27AM 16 Q. AND SO YOU UNDERSTAND THAT EVEN IF A COMPANY HAS DEVELOPED
11:27AM 17 SOME TECHNOLOGY, IT'S GOING TO, IF IT'S SMART, CONTINUE TO
11:27AM 18 IMPROVE AND WORK ON THE TECHNOLOGY; RIGHT?

11:27AM 19 A. CORRECT.

11:27AM 20 Q. SO, FOR EXAMPLE, IF APPLE COMES UP WITH AN IPHONE, IT
11:27AM 21 MIGHT STILL BE WORKING ON NEW VERSIONS OF THE IPHONE; RIGHT?

11:27AM 22 A. YES.

11:27AM 23 Q. AND THE VERSION THAT THEY PUT OUT MIGHT BE A PERFECTLY
11:27AM 24 GOOD SERVICEABLE IPHONE; RIGHT?

11:27AM 25 A. YES.

11:27AM 1 Q. BUT THEY MIGHT THINK OF SOME NEW FEATURES THAT THEY COULD
11:27AM 2 ADD TO IT; RIGHT?

11:27AM 3 A. YES.

11:27AM 4 Q. AND SOME WAY TO MAKE THE USER EXPERIENCE BETTER?

11:27AM 5 A. THAT'S RIGHT.

11:27AM 6 Q. OR IT MIGHT BE ABLE TO DO MORE OR CONTAIN MORE APPS ON IT;
11:28AM 7 RIGHT?

11:28AM 8 A. SURE.

11:28AM 9 Q. AND BY THE SAME TOKEN, THE THERANOS DEVICES OVER TIME, THE
11:28AM 10 FIRST ONE MIGHT BE ABLE TO DO A FEW ASSAYS; RIGHT?

11:28AM 11 AND THEN LATER VERSIONS --

11:28AM 12 A. YES.

11:28AM 13 Q. -- MIGHT BE ABLE TO HANDLE MORE ASSAYS; RIGHT?

11:28AM 14 A. CORRECT.

11:28AM 15 Q. OKAY. AND THAT'S WHAT YOU WOULD EXPECT?

11:28AM 16 A. YEAH, THAT WOULD BE A NATURAL LIFECYCLE.

11:28AM 17 Q. OKAY. AND DO YOU HAVE A MEMORY, MR. LUCAS, THAT THE
11:28AM 18 DOCUMENT THAT I WAS DESCRIBING A MINUTE AGO, ACTUALLY TALKED
11:28AM 19 ABOUT THE THERANOS 3.0 SERIES OF DEVICES?

11:28AM 20 A. I DON'T REMEMBER.

11:28AM 21 Q. OKAY. IF I COULD SHOW YOU ANOTHER TAB. IT'S TAB 12022 IN
11:28AM 22 YOUR BINDER.

11:29AM 23 A. YES.

11:29AM 24 Q. IF YOU GO ON THE VARIOUS PAGES OF THAT DOCUMENT TO THE
11:29AM 25 VERY BOTTOM RIGHT, YOU'LL SEE SOME NUMBERS THAT ACTUALLY START

11:29AM 1 WITH LETTERS AND THEN ARE NUMBERS.

11:29AM 2 WE CALL THEM BATES NUMBERS.

11:29AM 3 A. YES.

11:29AM 4 Q. OKAY. AND IF YOU COULD GO TO THE ONE THAT IS ENDING IN
11:29AM 5 806.

11:29AM 6 A. YES.

11:29AM 7 Q. AND ALSO, MR. LUCAS, IF YOU WANT TO LOOK AT THE FIRST PAGE
11:29AM 8 OF THE EXHIBIT, 12022, JUST TO ORIENT YOURSELF TO WHAT IT IS,
11:29AM 9 THAT IS ALSO FINE.

11:30AM 10 A. YES.

11:30AM 11 Q. OKAY. AND LOOKING AT THAT PAGE ENDING IN 806, IS THAT A
11:30AM 12 DOCUMENT THAT YOU SAW IN CONNECTION WITH YOUR EARLIER
11:30AM 13 INVESTMENT IN THERANOS?

11:30AM 14 A. YES.

11:30AM 15 Q. AND DOES THAT REFRESH YOUR MEMORY THAT THERE WAS
11:30AM 16 DISCUSSION OF THE THERANOS 3.0 DEVICE?

11:30AM 17 A. SURE. THAT'S WHAT IT SAYS THERE, SO YES.

11:30AM 18 Q. OKAY. AND YOU UNDERSTOOD THAT THE THERANOS 3.0 DEVICE,
11:30AM 19 SET FORTH BACK IN THIS TIME PERIOD, WAS EXPECTED TO BE ABLE TO
11:30AM 20 DO ABOUT TEN ASSAYS?

11:30AM 21 A. ON LOOKING BACK, LOOKING AT THIS, YES.

11:30AM 22 Q. OKAY. AND THEN LATER VERSIONS WOULD DO MORE ASSAYS?

11:30AM 23 A. YES.

11:30AM 24 Q. AND EVENTUALLY THE THERANOS 5.0 SERIES MIGHT BE ABLE TO DO
11:31AM 25 MORE THAN A THOUSAND ASSAYS; RIGHT?

11:31AM 1

A. YES.

11:31AM 2

Q. AND YOU KNEW AT THE TIME THAT YOU WERE WORKING WITH

11:31AM 3

THERANOS, THAT YOU NEVER BELIEVED IT COULD DO MORE THAN DOZENS

11:31AM 4

OF ASSAYS; RIGHT?

11:31AM 5

A. CORRECT.

11:31AM 6

Q. OKAY. AND WERE YOU AWARE AT THE TIME OF YOUR 2013

11:31AM 7

INVESTMENT, MR. LUCAS, THAT THERANOS HAD BEEN RUNNING OVER 50

11:31AM 8

FINGERSTICK ASSAYS WITH THEIR -- IN THEIR LAB?

11:31AM 9

A. WELL, AS I SAID, I BELIEVED THEY COULD DO DOZENS.

11:31AM 10

Q. OKAY. AND 50 WOULD BE DOZENS; RIGHT?

11:31AM 11

A. YEAH. SURE.

11:31AM 12

Q. OKAY. SO ACTUALLY THE DOZENS THAT YOU BELIEVED THERANOS

11:31AM 13

COULD DO, WERE MORE THAN WHAT MS. HOLMES HAD PREDICTED THERANOS

11:31AM 14

3.0 SERIES COULD DO BACK IN THE 2005 TIME PERIOD; RIGHT?

11:32AM 15

A. THAT WOULD BE, THAT WOULD BE CORRECT.

11:32AM 16

Q. RIGHT.

11:32AM 17

AND YOU KNEW THIS THE WHOLE TIME THAT YOU WERE ASSOCIATED

11:32AM 18

OR WORKING WITH THERANOS, INCLUDING DURING ALL OF THE TIME THAT

11:32AM 19

YOU WERE AN INVESTOR; RIGHT?

11:32AM 20

A. WELL, THIS IS -- I WOULD HAVE SEEN THIS WHENEVER THIS WAS,

11:32AM 21

2005, AND THIS WAS GOING FORWARD PROJECTING. AND AS YOU SEE,

11:32AM 22

THE TIMEFRAME GOES FROM 2005 TO 2010.

11:32AM 23

SO IN 2010, YOU HAVE THE THERANOS 5.0 DOING MORE THAN A

11:32AM 24

THOUSAND TESTS.

11:32AM 25

Q. RIGHT.

11:32AM 1 BUT SOMETIMES, YOU UNDERSTAND, THAT WHAT COMPANIES PREDICT

11:32AM 2 WILL HAPPEN IN A PARTICULAR YEAR, IT MIGHT GO SLOWER THAN THAT;

11:32AM 3 RIGHT?

11:32AM 4 A. YEAH. NO, THAT'S RIGHT.

11:32AM 5 Q. AND THAT'S FAIR; RIGHT?

11:32AM 6 A. YES.

11:32AM 7 Q. AND THAT WOULDN'T BE ALARMING TO YOU; RIGHT?

11:33AM 8 A. AS LONG AS WE WERE PROGRESSING THAT WAY, YES, THAT WOULD

11:33AM 9 NOT BE ALARMING.

11:33AM 10 Q. RIGHT.

11:33AM 11 AND, IN FACT, EVEN THOUGH YOU HAD SEEN A PREDICTION IN

11:33AM 12 2005, BY THE TIME THAT YOU INVESTED IN 2013, YOU STILL BELIEVED

11:33AM 13 THAT THERANOS COULD ONLY DO DOZENS OF ASSAYS; RIGHT?

11:33AM 14 A. THAT'S RIGHT.

11:33AM 15 Q. NOT HUNDREDS?

11:33AM 16 A. THAT'S RIGHT.

11:33AM 17 Q. AND NOT THOUSANDS?

11:33AM 18 A. CORRECT.

11:33AM 19 Q. OKAY. AND YOU ALSO UNDERSTOOD, AS A SAVVY INVESTOR, THAT

11:33AM 20 THERE WERE ALL SORTS OF RISKS ASSOCIATED WITH DEVELOPMENT OF

11:33AM 21 THIS COMPANY AND ITS TECHNOLOGY?

11:33AM 22 A. YES.

11:33AM 23 Q. AND, FOR EXAMPLE, ONE RISK WOULD BE REGULATORY RISK?

11:33AM 24 A. YES.

11:33AM 25 Q. AND THAT SOMETIMES A COMPANY HAS TO DEAL WITH REGULATORS

11:33AM 1 AND THERE MIGHT BE SOME LIMITS ON WHAT THEY COULD ROLL OUT AT A
11:33AM 2 PARTICULAR TIME; RIGHT?

11:33AM 3 A. YES.

11:33AM 4 Q. AND YOU ALSO KNEW THAT THERANOS, WHEN IT LAUNCHED WITH
11:34AM 5 WALGREENS, AND WE'LL TALK ABOUT THIS MORE IN A MINUTE, IT WAS
11:34AM 6 ACTUALLY COLLECTING SAMPLES AT WALGREENS; RIGHT?

11:34AM 7 A. YES.

11:34AM 8 Q. IT WASN'T PLACING THE DEVICES IN THE WALGREENS STORES?

11:34AM 9 A. THE INTENTION WAS TO PLACE THE DEVICES INTO STORES.
11:34AM 10 AND I THINK THERE WAS A DECISION, EITHER MUTUALLY OR BY
11:34AM 11 ONE OF THE OTHER THAT EVENED IT UP, THAT THEY WERE JUST
11:34AM 12 COLLECTING THE SAMPLES IN THE STORES.

11:34AM 13 Q. AND WHEN YOU SAY "MUTUALLY" YOU MEAN --

11:34AM 14 A. BETWEEN WALGREENS AND THERANOS.

11:34AM 15 Q. RIGHT.

11:34AM 16 SO YOU KNEW THAT BEFORE YOUR 2013 INVESTMENT?

11:34AM 17 A. NO, THAT'S NOT CORRECT.

11:34AM 18 Q. OKAY. YOU KNEW THAT AT SOME POINT DURING YOUR INVESTMENT?

11:34AM 19 A. AFTER 2013.

11:34AM 20 Q. OKAY.

11:34AM 21 A. YES.

11:34AM 22 Q. YOU UNDERSTOOD --

11:34AM 23 A. I BELIEVE.

11:34AM 24 Q. -- AT SOME POINT THAT THERE HAD BEEN A DECISION, PERHAPS
11:35AM 25 MUTUALLY, THAT THE DEVICES WOULD NOT BE PLACED IN THE STORES,

11:35AM 1 BUT SAMPLES WOULD BE COLLECTED AND TRANSPORTED TO A LAB AT
11:35AM 2 THERANOS; RIGHT?

11:35AM 3 A. YES.

11:35AM 4 Q. AND THAT WASN'T -- THAT DIDN'T ALARM YOU IN ANY WAY;
11:35AM 5 RIGHT?

11:35AM 6 A. NO.

11:35AM 7 Q. OKAY. DURING DIRECT YOU TALKED ABOUT YOUR TWO 2006
11:35AM 8 INVESTMENTS; RIGHT?

11:35AM 9 A. YES.

11:35AM 10 Q. AND ONE OF THEM WAS EARLIER IN THE YEAR?

11:35AM 11 A. CORRECT.

11:35AM 12 Q. AND THE OTHER ONE WAS IN THE FALL OF 2006?

11:35AM 13 A. YES.

11:35AM 14 Q. AND I THINK YOU SAID THE INITIAL INVESTMENT IN 2006 WAS
11:35AM 15 FOR \$400,000?

11:35AM 16 A. CORRECT.

11:35AM 17 Q. AND THAT WAS FUNDS THAT CAME FROM PARTIALLY YOURSELF BUT
11:35AM 18 ALSO OTHER INVESTORS IN BLACK DIAMOND VENTURES?

11:36AM 19 A. THAT'S RIGHT.

11:36AM 20 Q. AND THE LATER INVESTMENT, I'M NOT SURE WE GOT A NUMBER ON
11:36AM 21 THAT, BUT DO YOU RECALL WHAT THE AMOUNT OF THE SECOND
11:36AM 22 INVESTMENT IN 2006 WAS?

11:36AM 23 A. I THINK IT WAS ABOUT A MILLION AND 2.

11:36AM 24 Q. OKAY. LET'S JUST TAKE A LOOK AT THAT REAL QUICK.
11:36AM 25 IF YOU COULD GO TO EXHIBIT 12003A.

11:36AM 1 A. COULD YOU SAY THE NUMBER AGAIN.

11:36AM 2 Q. SURE.

11:36AM 3 IT'S EXHIBIT 12003 AND THEN A CAPITAL A AT THE END.

11:37AM 4 A. OH, YES, I HAVE IT.

11:37AM 5 Q. OKAY. AND LOOKING AT PAGE -- LOOKING AT THE SAME TYPES OF

11:37AM 6 NUMBERS, THE PAGE ENDING WITH 8291.

11:37AM 7 DO YOU SEE THAT?

11:37AM 8 A. YES.

11:37AM 9 Q. AND LOOKING AT PARAGRAPH 1.2, DOES THAT HELP YOU WITH

11:37AM 10 ANSWERING A QUESTION ABOUT HOW MUCH -- HOW MUCH MONEY PER SHARE

11:37AM 11 YOU PAID FOR THAT SECOND 2006 INVESTMENT?

11:37AM 12 A. YES.

11:37AM 13 Q. AND WHAT WAS THE AMOUNT?

11:37AM 14 A. \$2.82 PER SHARE.

11:37AM 15 Q. OKAY. AND HOW MANY SHARES DID YOU PURCHASE AT THAT TIME?

11:38AM 16 A. WELL, IF IT WAS ABOUT A MILLION 2 AND DIVIDE BY 2.82, IT'S

11:38AM 17 ABOUT 4,000 -- I'M SORRY, 400,000 SHARES.

11:38AM 18 Q. OKAY. AND DO YOU UNDERSTAND THAT AT THAT TIME,

11:38AM 19 MR. BALWANI DIDN'T WORK FOR THERANOS?

11:38AM 20 A. NOT TO MY KNOWLEDGE, BUT --

11:38AM 21 Q. OKAY. LET'S JUST MOVE TO 2007, MR. LUCAS. SO THIS IS THE

11:38AM 22 YEAR FOLLOWING THOSE TWO INVESTMENTS; RIGHT?

11:38AM 23 AND YOU AT THAT POINT WERE WORKING WITH MS. HOLMES TO HELP

11:38AM 24 DEVELOP SOME FINANCIAL MODELS?

11:38AM 25 A. YES.

11:38AM 1 Q. AND YOU DID THAT BECAUSE YOU WANTED TO HELP HER UNDERSTAND
11:38AM 2 HOW TO PUT TOGETHER A FINANCIAL MODEL?

11:38AM 3 A. JUST TO HELP BECAUSE THEY DIDN'T HAVE THE ABILITY TO DO
11:39AM 4 THAT, THAT'S RIGHT.

11:39AM 5 Q. RIGHT.
11:39AM 6 BUT YOU HAD THAT SORT OF EXPERIENCE; RIGHT?

11:39AM 7 A. YES.

11:39AM 8 Q. OKAY. AND YOU WERE -- WHAT YOU WERE PUTTING TOGETHER WAS
11:39AM 9 FINANCIAL PROJECTIONS; RIGHT?

11:39AM 10 A. YES.

11:39AM 11 Q. NOT FINANCIAL STATEMENTS?

11:39AM 12 A. CORRECT.

11:39AM 13 Q. AND PROJECTIONS ARE WHERE YOU'RE JUST TRYING TO PREDICT IF
11:39AM 14 THINGS GO A CERTAIN WAY, HOW MUCH REVENUE A COMPANY COULD EARN;
11:39AM 15 RIGHT?

11:39AM 16 A. CORRECT.

11:39AM 17 Q. AND AS AN INVESTOR, YOU UNDERSTAND THE DIFFERENCE BETWEEN
11:39AM 18 A FINANCIAL PROJECTION OF THAT NATURE AND A FINANCIAL
11:39AM 19 STATEMENT; RIGHT?

11:39AM 20 A. YES.

11:39AM 21 Q. BECAUSE A FINANCIAL STATEMENT WOULD BE ACTUALLY SAYING
11:39AM 22 WHAT ACTUALLY OCCURRED; RIGHT?

11:39AM 23 A. CORRECT.

11:39AM 24 Q. AND THAT IF SOMETHING IS LABELLED PROJECTED STATEMENT,
11:39AM 25 THEN YOU WOULD EXPECT IT TO BE A PROJECTION RATHER THAN A

11:39AM 1 FINANCIAL STATEMENT; CORRECT?

11:39AM 2 A. CORRECT.

11:39AM 3 Q. DO YOU REMEMBER THE TIME PERIOD 2008, 2009, AND IN

11:40AM 4 PARTICULAR, THAT THERE WAS A FINANCIAL CRISIS GOING ON IN THE

11:40AM 5 WORLD AT THAT TIME?

11:40AM 6 A. YES.

11:40AM 7 Q. WOULD YOU PREFER TO FORGET THAT TIMEFRAME?

11:40AM 8 A. YES.

11:40AM 9 (LAUGHTER.)

11:40AM 10 BY MR. COOPERSMITH:

11:40AM 11 Q. OKAY. BUT THAT DID HAPPEN; RIGHT?

11:40AM 12 A. IT HAPPENED.

11:40AM 13 Q. AND THERE WERE A LOT OF COMPANIES AND OTHERS WHO WERE

11:40AM 14 STRUGGLING DURING THAT TIME PERIOD; RIGHT?

11:40AM 15 A. YES.

11:40AM 16 Q. AND INVESTMENT DOLLARS WERE A LITTLE BIT HARDER TO COME BY

11:40AM 17 FOR COMPANIES TRYING TO MAKE A GO OF IT; RIGHT?

11:40AM 18 A. YEAH.

11:40AM 19 Q. AND YOU YOURSELF AT BLACK DIAMOND VENTURES HAD TO TIGHTEN

11:40AM 20 YOUR BELT TO SOME EXTENT; IS THAT FAIR?

11:40AM 21 A. I DON'T REALLY RECALL.

11:40AM 22 Q. OKAY. BECAUSE YOU PREFER TO FORGET THAT TIME PERIOD?

11:40AM 23 A. WELL, NO.

11:40AM 24 IT'S -- WE'RE STILL MAKING OUR INVESTMENTS, BUT OUR

11:40AM 25 COMPANIES THAT WE INVESTED IN WOULD MAYBE HAVE TO TIGHTEN UP,

11:40AM 1 BUT NOT NECESSARILY OUR FIRM IN TERMS OF OUR OPERATING COSTS.

11:41AM 2 Q. OKAY. AND YOU UNDERSTAND THAT A COMPANY LIKE THERANOS IN
11:41AM 3 THAT TIME PERIOD, 2009, WOULD HAVE A HARDER TIME RAISING
11:41AM 4 CAPITAL BECAUSE OF THE WAY THE WORLD WAS AT THAT POINT; RIGHT?

11:41AM 5 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.
11:41AM 6 LACKS FOUNDATION.

11:41AM 7 THE COURT: SUSTAINED.

11:41AM 8 BY MR. COOPERSMITH:

11:41AM 9 Q. OKAY. WELL, WAS THAT TRUE OF BASICALLY THE WHOLE
11:41AM 10 CORPORATE INVESTMENT WORLD, MR. LUCAS?

11:41AM 11 A. YOU KNOW, I, I DON'T REALLY REMEMBER. THAT WAS A
11:41AM 12 FINANCIAL CRISIS REALLY WITH MORTGAGE BACK SECURITIES AND ALL,
11:41AM 13 AND I -- GENERALLY IT WAS NOT A GREAT TIME FOR THE STOCK MARKET
11:41AM 14 AND SO FORTH.

11:41AM 15 I JUST DON'T RECALL AS IT RELATED TO OUR COMPANIES, YOU
11:41AM 16 KNOW, HOW THEY WERE DOING.

11:41AM 17 Q. OKAY. DO YOU KNOW THAT IN THAT TIMEFRAME IN 2009,
11:41AM 18 MR. BALWANI GUARANTEED A LOAN FOR \$10 MILLION TO THERANOS?

11:42AM 19 A. I DID NOT KNOW THIS AT THE TIME I DON'T BELIEVE.

11:42AM 20 Q. OKAY.

11:42AM 21 A. I HAD SUBSEQUENTLY HEARD THAT, BUT I'M NOT SURE I KNEW
11:42AM 22 THAT AT THE TIME.

11:42AM 23 Q. AND YOU UNDERSTAND THAT MR. BALWANI ACTUALLY INCREASED
11:42AM 24 THAT LINE OF CREDIT TO \$12 MILLION SHORTLY THEREAFTER?

11:42AM 25 A. I DON'T KNOW.

11:42AM 1 Q. AND YOU UNDERSTAND THAT HE DID THAT SO THERANOS COULD
11:42AM 2 CONTINUE TO OPERATE?

11:42AM 3 A. CERTAINLY AT THE TIME I DID NOT KNOW THAT --

11:42AM 4 Q. OKAY.

11:42AM 5 A. -- THAT I CAN REMEMBER.

11:42AM 6 BUT INDEED, IF THAT HAPPENED, THAT WAS A GOOD THING.

11:42AM 7 Q. RIGHT.

11:42AM 8 AND, IN FACT, AT THAT TIME YOU, AS AN INVESTOR IN
11:42AM 9 THERANOS, IF THAT WAS THE WAY THAT THE COMPANY SURVIVED, THAT
11:42AM 10 WOULD HAVE PREVENTED A COMPLETE LOSS OF YOUR INVESTMENT RIGHT
11:42AM 11 THEN AND THERE; RIGHT?

11:42AM 12 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

11:42AM 13 THE COURT: SUSTAINED.

11:43AM 14 BY MR. COOPERSMITH:

11:43AM 15 Q. MR. LUCAS, IF THE COMPANY HAD GONE UNDER BECAUSE IT
11:43AM 16 COULDN'T OBTAIN ANY FINANCING IN 2009, YOU WOULD HAVE LOST YOUR
11:43AM 17 INVESTMENT RIGHT THEN AND THERE?

11:43AM 18 A. CORRECT.

11:43AM 19 MR. BOSTIC: OBJECTION.

11:43AM 20 THE COURT: THE ANSWER WILL REMAIN.

11:43AM 21 BY MR. COOPERSMITH:

11:43AM 22 Q. AND IF MR. BALWANI HELPED THE COMPANY SURVIVE, THEN THAT
11:43AM 23 WOULD HAVE PREVENTED THAT FROM HAPPENING; FAIR?

11:43AM 24 MR. BOSTIC: OBJECTION.

11:43AM 25 THE COURT: I THINK YOU'VE DEVELOPED THAT.

11:43AM 1 MR. COOPERSMITH: OKAY. THANK YOU.

11:43AM 2 Q. LET'S TALK ABOUT 2013. AND YOU UNDERSTAND THAT BEFORE
11:43AM 3 2013 ACTUALLY, THERANOS HAD ESTABLISHED A RELATIONSHIP WITH
11:43AM 4 WALGREENS?

11:43AM 5 A. YES.

11:43AM 6 Q. AND YOU UNDERSTAND WALGREENS IS A VERY LARGE RETAILER?

11:43AM 7 A. YES.

11:43AM 8 Q. AND IT'S IN THE PHARMACY BUSINESS BASICALLY; RIGHT?

11:43AM 9 A. YES.

11:43AM 10 Q. AND YOU UNDERSTAND IT OPERATES THOUSANDS OF STORES IN THE
11:43AM 11 UNITED STATES?

11:43AM 12 A. YEP.

11:43AM 13 Q. AND EVEN MORE INTERNATIONALLY?

11:43AM 14 A. YES.

11:44AM 15 Q. AND I THINK YOU SAID THIS ON DIRECT, BUT A PARTNER LIKE
11:44AM 16 WALGREENS WOULD BE VERY DESIRABLE FOR A COMPANY LIKE THERANOS
11:44AM 17 TRYING TO DEVELOP ITS TECHNOLOGY AND GET INTO THE MARKETPLACE?

11:44AM 18 A. ABSOLUTELY.

11:44AM 19 Q. AND YOU HAD -- THE FACT THAT WALGREENS WAS PARTNERING WITH
11:44AM 20 THERANOS WAS SOMETHING THAT WAS A POSITIVE FOR YOU IN DECIDING
11:44AM 21 HOW TO PROCEED WITH THERANOS?

11:44AM 22 A. YES.

11:44AM 23 Q. RIGHT.

11:44AM 24 AND YOU UNDERSTAND THAT THEY HAD THE RETAIL EXPERIENCE TO
11:44AM 25 ACCOMPLISH SOMETHING LIKE A LARGE ROLLOUT OF THERANOS

11:44AM 1 TECHNOLOGY?

11:44AM 2 A. YES.

11:44AM 3 Q. OKAY. AND THAT WAS IMPORTANT TO YOUR DECISION TO INVEST?

11:44AM 4 A. CORRECT.

11:44AM 5 Q. IF WE COULD TAKE A LOOK AT ANOTHER TAB IN YOUR BINDER,

11:44AM 6 EXHIBIT 20432.

11:45AM 7 IS THAT IN YOUR BINDER, MR. LUCAS?

11:45AM 8 A. 20432?

11:45AM 9 Q. YES.

11:45AM 10 A. NO.

11:45AM 11 Q. OKAY.

11:45AM 12 CAN I HAVE A MOMENT, YOUR HONOR?

11:45AM 13 THE COURT: YES.

11:45AM 14 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

11:45AM 15 MR. COOPERSMITH: I'M TOLD, YOUR HONOR, THAT THIS IS

11:45AM 16 AN EXHIBIT THAT IS IN EVIDENCE. SO CAN WE PUT IT ON THE SCREEN

11:45AM 17 WITH YOUR PERMISSION, YOUR HONOR?

11:46AM 18 THE COURT: YES.

11:46AM 19 BY MR. COOPERSMITH:

11:46AM 20 Q. OKAY. SO CAN YOU SEE THAT ON YOUR SCREEN?

11:46AM 21 A. YES.

11:46AM 22 Q. AND YOU SEE THAT THIS IS A -- SOMETHING FROM

11:46AM 23 WWW.WALGREENS.COM?

11:46AM 24 A. YES.

11:46AM 25 Q. AND THIS IS SOMETHING THAT YOU REVIEWED BEFORE YOUR

11:46AM 1 INVESTMENT IN DECEMBER OF 2013?

11:46AM 2 A. I'M SURE.

11:46AM 3 Q. OKAY. AND YOU SEE AT THE BEGINNING IT SAYS,

11:46AM 4 "THERANOS INC. AND WALGREENS TODAY CELEBRATE THE OPENING OF THE
11:46AM 5 NEW THERANOS WELLNESS CENTERS LOCATED AT WALGREENS STORES IN
11:46AM 6 THE PHOENIX METROPOLITAN AREA."

11:46AM 7 DO YOU SEE THAT?

11:46AM 8 A. YES.

11:46AM 9 Q. AND IT GOES ON TO SAY, "THIS MARKS THE NEXT STEP IN
11:46AM 10 THERANOS AND WALGREENS PLANNED NATIONAL ROLLOUT OF THERANOS
11:46AM 11 WELLNESS CENTERS."

11:46AM 12 DO YOU SEE THAT?

11:46AM 13 A. YES.

11:46AM 14 Q. OKAY. AND THEN IF YOU GO TO -- I THINK YOU SAW -- WELL,
11:46AM 15 LET ME JUST POINT YOU TO THE SECOND PARAGRAPH.

11:46AM 16 DO YOU SEE THAT IT SAYS, "THE NEW THERANOS WELLNESS
11:46AM 17 CENTERS WILL PROVIDE PHOENIX AREA CONSUMERS WITH ACCESS TO LESS
11:47AM 18 INVASIVE AND MORE AFFORDABLE CLINICIAN-DIRECTED LAB TESTING
11:47AM 19 FROM A BLOOD SAMPLE AS SMALL AS A FEW DROPS."

11:47AM 20 DO YOU SEE THAT?

11:47AM 21 A. YES.

11:47AM 22 Q. AND THEN IT SAYS, "THE MICRO-SAMPLES COLLECTED BY
11:47AM 23 CERTIFIED PHLEBOTOMISTS OR TRAINED WALGREENS TECHNICIANS ARE
11:47AM 24 TAKEN FROM EITHER A TINY FINGERSTICK OR TRADITIONAL METHODS."

11:47AM 25 AND THEN IT GOES ON?

11:47AM 1 A. YES.

11:47AM 2 Q. AND A TRADITIONAL METHOD MEANS GETTING A NEEDLE IN THE ARM

11:47AM 3 TO TAKE BLOOD; RIGHT?

11:47AM 4 A. YEAH.

11:47AM 5 Q. AND AT THE TIME YOU SAID THAT YOU KNEW THAT THERANOS COULD

11:47AM 6 DO DOZENS OF TESTS?

11:47AM 7 A. THAT'S RIGHT.

11:47AM 8 Q. AND YOU KNEW THAT THERE WERE MORE BLOOD TESTS THAT

11:47AM 9 SOMETIMES DOCTORS OR PATIENTS NEEDED TO GET BEYOND THE DOZENS

11:47AM 10 OF TESTS; RIGHT?

11:47AM 11 A. THAT'S RIGHT.

11:47AM 12 Q. AND SO THE ONES THAT THERANOS COULDN'T DO BEYOND THE

11:47AM 13 DOZENS, THEY WOULD HAVE TO BE DONE BY SOME OTHER METHOD; RIGHT?

11:47AM 14 A. YES.

11:47AM 15 Q. AND THAT MIGHT BE TRADITIONAL METHODS; RIGHT?

11:47AM 16 A. CORRECT.

11:47AM 17 Q. AND YOU KNEW THAT BEFORE YOU INVESTED IN 2013?

11:48AM 18 A. YES.

11:48AM 19 Q. OKAY. AT THIS TIME, THIS IS AN ANNOUNCEMENT TO CONSUMERS

11:48AM 20 IN THE PHOENIX METROPOLITAN AREA.

11:48AM 21 IF WE GO TO THE NEXT EXHIBIT, YOU SEE AT THE TOP IT SAYS,

11:48AM 22 "NEW THERANOS WELLNESS CENTERS ARE LOCATED AT THE FOLLOWING

11:48AM 23 WALGREENS STORES, WITH PLANS TO ADD ADDITIONAL LOCATIONS ON AN

11:48AM 24 ONGOING BASIS."

11:48AM 25 DO YOU SEE THAT?

11:48AM 1 A. YES.

11:48AM 2 Q. AND THERE ARE TWO DIFFERENT ADDRESSES BOTH IN THE PHOENIX

11:48AM 3 AREA; RIGHT?

11:48AM 4 A. YES.

11:48AM 5 Q. PHOENIX AND SCOTTSDALE.

11:48AM 6 SO THAT'S TWO STORES IN THE PHOENIX AREA; CORRECT?

11:48AM 7 A. YES.

11:48AM 8 Q. AND YOU KNEW THAT THEY ALSO HAD ONE STORE NEAR HERE IN

11:48AM 9 PALO ALTO, CALIFORNIA?

11:48AM 10 A. YES.

11:48AM 11 Q. OKAY. SO THAT'S THREE STORES?

11:48AM 12 A. YES.

11:48AM 13 Q. OKAY. SO AT THIS TIME, THIS IS NOVEMBER, ABOUT A MONTH OR

11:48AM 14 SO BEFORE YOU INVESTED, YOU UNDERSTOOD THAT THERANOS HAD THREE

11:48AM 15 STORES THAT WERE COLLECTING BLOOD SAMPLES WHICH WERE WALGREENS

11:49AM 16 LOCATIONS?

11:49AM 17 A. YES.

11:49AM 18 Q. OKAY. AND YOU UNDERSTOOD ALSO THAT THERANOS HAD A GOAL TO

11:49AM 19 ROLL OUT MANY, MANY MORE STORES; RIGHT?

11:49AM 20 A. CORRECT.

11:49AM 21 Q. AND THAT WALGREENS WOULD BE INVOLVED WITH THAT PROJECT

11:49AM 22 BECAUSE THEY WERE THEIR STORES; RIGHT?

11:49AM 23 A. YES.

11:49AM 24 Q. OKAY. AND IF THAT PROJECT SUCCEEDED, YOUR INVESTMENT

11:49AM 25 COULD HAVE BECOME VERY, VERY VALUABLE INDEED; RIGHT?

11:49AM 1 A. ONE WOULD HAVE BELIEVED SO, YES.

11:49AM 2 Q. RIGHT.

11:49AM 3 AND YOU ALSO UNDERSTOOD THAT WHEN YOU ARE TRYING TO ROLL
11:49AM 4 OUT NEW PRODUCTS OR SERVICES ON THAT TYPE OF A SCALE, THERE ARE
11:49AM 5 A LOT OF RISKS INVOLVED WITH THAT?

11:49AM 6 A. CERTAINLY RISKS IN DEVELOPING THE INFRASTRUCTURE, YES.

11:49AM 7 Q. RIGHT.

11:49AM 8 AND THAT FOR VARIOUS REASONS, IT MIGHT NOT HAPPEN?

11:49AM 9 A. THAT WOULD BE AT THAT POINT MORE OF AN EXECUTION RISK THAN
11:50AM 10 A TECHNOLOGY RISK.

11:50AM 11 Q. OKAY. WELL, LET'S CALL IT EXECUTION RISK.

11:50AM 12 THAT WOULD JUST BE RISK INVOLVED WITH PUTTING TOGETHER ALL
11:50AM 13 OF THE MOVING PARTS THAT WOULD BE NECESSARY TO ROLL OUT MORE
11:50AM 14 AND MORE STORES; RIGHT?

11:50AM 15 A. YES.

11:50AM 16 Q. AND THOSE RISKS ARE REAL; RIGHT?

11:50AM 17 A. SURE.

11:50AM 18 Q. OKAY. AND YOU UNDERSTOOD, THOUGH, BECAUSE YOU MENTIONED
11:50AM 19 TECHNOLOGY RISK, YOUR UNDERSTANDING AT THE TIME WAS THAT THE
11:50AM 20 TECHNOLOGY WAS FUNCTIONAL; RIGHT?

11:50AM 21 A. YES.

11:50AM 22 Q. AND THAT'S WHAT YOU HAD EXPECTED AT THE TIME; RIGHT?

11:50AM 23 A. YES.

11:50AM 24 Q. AND, IN FACT, YOU WOULD HAVE EXPECTED WALGREENS TO NOT DO
11:50AM 25 A PROJECT LIKE THIS UNLESS THEY WERE CONFIDENT IN THE

11:50AM 1 TECHNOLOGY?

11:50AM 2 MR. BOSTIC: OBJECTION. 401, CALLS FOR SPECULATION.

11:50AM 3 MR. COOPERSMITH: YOUR HONOR, HE'S A BUSINESS PERSON

11:50AM 4 WHO I THINK HAD AN UNDERSTANDING OF THIS, AND --

11:50AM 5 THE COURT: WHY DON'T YOU ASK HIM RELATED TO HIS

11:50AM 6 BUSINESS EXPERIENCE AND INVESTMENT EXPERIENCE.

11:50AM 7 MR. COOPERSMITH: SURE, YOUR HONOR. THANK YOU.

11:50AM 8 Q. SO, MR. LUCAS, YOU HAVE DECADES OF INVESTMENT AND BUSINESS

11:51AM 9 EXPERIENCE; CORRECT?

11:51AM 10 A. YES.

11:51AM 11 Q. AND YOU UNDERSTOOD THAT WALGREENS HAD TO MAKE A DECISION

11:51AM 12 TO PARTNER WITH THERANOS ON THESE ROLLOUT PROJECTS; RIGHT?

11:51AM 13 A. YES.

11:51AM 14 Q. OKAY. AND BASED ON YOUR BUSINESS EXPERIENCE AND

11:51AM 15 KNOWLEDGE, WOULD YOU HAVE EXPECTED WALGREENS TO HAVE -- BE

11:51AM 16 CONFIDENT IN THE TECHNOLOGY BEFORE THEY AGREED TO DO SOMETHING

11:51AM 17 LIKE THIS?

11:51AM 18 MR. BOSTIC: SAME OBJECTIONS. 401, 403, CALLS FOR

11:51AM 19 SPECULATION.

11:51AM 20 THE COURT: OVERRULED. HE CAN ANSWER THE QUESTION

11:51AM 21 BASED ON HIS EXPERIENCE.

11:51AM 22 THE WITNESS: ASK AGAIN, PLEASE.

11:51AM 23 BY MR. COOPERSMITH:

11:51AM 24 Q. SURE, MR. LUCAS.

11:51AM 25 BASED ON YOUR BUSINESS EXPERIENCE, YOU WOULD HAVE EXPECTED

11:51AM 1 WALGREENS TO HAVE AND BE CONFIDENT IN THE TECHNOLOGY BEFORE
11:52AM 2 THEY EMBARKED ON A PROJECT WITH THERANOS TO PUT THESE BLOOD
11:52AM 3 TESTING SERVICES IN ITS OWN STORES?

11:52AM 4 A. YES.

11:52AM 5 Q. AND DID YOU KNOW THAT WALGREENS HAD THERANOS DEVICES IN
11:52AM 6 ITS POSSESSIONS FOR YEARS PRIOR TO THE ROLLOUT?

11:52AM 7 A. I DON'T RECALL.

11:52AM 8 Q. AND DOES THAT SURPRISE YOU IF THAT WAS THE CASE?

11:52AM 9 A. NO.

11:52AM 10 Q. BECAUSE THAT WOULD FIT WITH YOUR EXPECTATION THAT
11:52AM 11 WALGREENS WOULD WANT TO KNOW OR UNDERSTAND THE TECHNOLOGY
11:52AM 12 BEFORE IT WENT INTO A ROLLOUT PROJECT WITH THERANOS; RIGHT?

11:52AM 13 A. YEAH, THAT WOULD BE REASONABLE.

11:52AM 14 Q. RIGHT.

11:52AM 15 AND DID YOU KNOW THAT WALGREENS ACTUALLY HAD THE ABILITY
11:52AM 16 TO USE THE DEVICE TO RUN TESTS AT ITS OWN HEADQUARTERS IN
11:52AM 17 ILLINOIS?

11:52AM 18 A. AGAIN, I WOULD THINK THAT THAT'S REASONABLE.

11:52AM 19 Q. OKAY. ALSO, I WANT TO SHOW YOU AN EXHIBIT THAT IS ALREADY
11:53AM 20 IN EVIDENCE.

11:53AM 21 YOUR HONOR, IT'S EXHIBIT 20553. MAY I PUT THAT IN FRONT
11:53AM 22 OF THE WITNESS?

11:53AM 23 THE COURT: YES.

11:53AM 24 MR. COOPERSMITH: THANK YOU.

11:53AM 25 Q. OKAY. SO WE'RE ALL LOOKING AT 20553.

11:53AM 1 AND YOU SEE THERE'S A -- ON PAGE 2, THERE'S A SUMMARY OF
11:53AM 2 HOPKINS/WALGREENS/THERANOS MEETING?

11:53AM 3 DO YOU SEE THAT?

11:53AM 4 A. YES.

11:53AM 5 Q. AND YOU SEE THE PARTICIPANTS?

11:53AM 6 A. YES.

11:53AM 7 Q. AND THERE ARE SOME DOCTORS FROM JOHNS HOPKINS.

11:53AM 8 DO YOU SEE THAT?

11:53AM 9 A. YES.

11:53AM 10 Q. AND THEN THERE ARE SOME PEOPLE FROM -- WELL, ONE PERSON
11:53AM 11 FROM WALGREENS; CORRECT?

11:53AM 12 A. YES.

11:53AM 13 Q. AND THEN THERE'S SOME PEOPLE FROM THERANOS, NAMELY,
11:53AM 14 MS. HOLMES AND MR. BALWANI?

11:53AM 15 A. YES.

11:53AM 16 Q. AND THEN THERE'S ANOTHER PERSON.

11:53AM 17 YOU KNOW WHAT JOHNS HOPKINS IS; RIGHT?

11:54AM 18 A. YES.

11:54AM 19 Q. AND WHAT IS IT?

11:54AM 20 A. IT'S ONE OF THE TOP UNIVERSITIES AND HERE IN THIS CASE
11:54AM 21 FROM THEIR TOP RATED HOSPITAL.

11:54AM 22 Q. OKAY. THANK YOU.

11:54AM 23 AND THEN IF YOU GO TO THE SECOND PAGE OF THE DOCUMENT, YOU
11:54AM 24 SEE THAT THERE ARE SOME KEY FINDINGS.

11:54AM 25 AND IT SAYS, "BASED ON THIS EVALUATION, THE CONSENSUS OF

11:54AM 1 THE HOPKINS TEAM WAS AS FOLLOWS."

11:54AM 2 AND THEN IT HAS THESE VARIOUS BULLET POINTS BLOWN OUT.

11:54AM 3 DO YOU SEE THAT?

11:54AM 4 A. YES.

11:54AM 5 Q. AND THEN THE FIRST ONE IS, "THE TECHNOLOGY IS NOVEL AND
11:54AM 6 SOUND. IT CAN ACCURATELY RUN A WIDE RANGE OF ROUTINE AND
11:54AM 7 SPECIAL ASSAYS."

11:54AM 8 DO YOU SEE THAT?

11:54AM 9 A. YES.

11:54AM 10 Q. AND I WON'T READ ALL OF THEM, BUT IF YOU GO TO THE LAST
11:54AM 11 BULLET POINT IT SAYS, "NO MAJOR WEAKNESSES WERE IDENTIFIED."

11:54AM 12 DO YOU SEE THAT?

11:54AM 13 A. YES.

11:54AM 14 Q. AND CONSISTENT WITH WHAT WE WERE JUST TALKING ABOUT, THE
11:54AM 15 FACT THAT THERE WAS A MEETING WITH JOHNS HOPKINS AND THEIR TEAM
11:54AM 16 WAS INVOLVED WITH WALGREENS AND EVALUATING THE TECHNOLOGY, THAT
11:54AM 17 SEEMS REASONABLE TO YOU, TOO; RIGHT?

11:55AM 18 A. YES.

11:55AM 19 MR. BOSTIC: OBJECTION. 401.

11:55AM 20 THE COURT: REASONABLE FOR -- I'M GOING TO SUSTAIN
11:55AM 21 THE OBJECTION.

11:55AM 22 MR. COOPERSMITH: OKAY. WELL, LET ME ASK ANOTHER
11:55AM 23 QUESTION, YOUR HONOR. THANK YOU.

11:55AM 24 Q. MR. LUCAS, BASED ON YOUR KNOWLEDGE AND EXPERIENCE, A
11:55AM 25 COMPANY LIKE WALGREENS, USING JOHNS HOPKINS TO HELP THEM

11:55AM 1 EVALUATE THERANOS TECHNOLOGY, THAT WOULD FIT WITH YOUR
11:55AM 2 EXPECTATIONS ABOUT WHAT A BIG RETAILER LIKE WALGREENS COULD DO;
11:55AM 3 CORRECT?
11:55AM 4 A. CORRECT.
11:55AM 5 Q. OKAY. LET'S TALK ABOUT THE PERIOD OF TIME LEADING UP TO
11:55AM 6 YOUR INVESTMENT IN LATE 2013. OKAY?
11:55AM 7 AND DURING DIRECT EXAMINATION, YOU WERE SHOWN A NEWSPAPER
11:55AM 8 ARTICLE FROM "THE WALL STREET JOURNAL."
11:56AM 9 DO YOU RECALL THAT?
11:56AM 10 A. YES.
11:56AM 11 Q. AND IT WAS ABOUT THERANOS; RIGHT?
11:56AM 12 A. YES.
11:56AM 13 Q. AND IT WAS BY A WRITER NAMED JOSEPH RAGO? YOU DON'T
11:56AM 14 REMEMBER THAT?
11:56AM 15 A. I DON'T.
11:56AM 16 Q. OKAY. AND I THINK DURING DIRECT YOU WERE SHOWN SOME
11:56AM 17 PASSAGES ABOUT THERANOS REFINING A THOUSAND TESTS.
11:56AM 18 DO YOU REMEMBER THAT?
11:56AM 19 A. YES.
11:56AM 20 Q. AND YOU SAID THAT YOU UNDERSTOOD THAT THEY ONLY -- AS YOU
11:56AM 21 UNDERSTOOD IT, THEY WERE DOING DOZENS OF TESTS; RIGHT?
11:56AM 22 A. YES.
11:56AM 23 Q. OKAY. AND IN YOUR WORLD OF VENTURE CAPITAL, SOMETIMES
11:56AM 24 THERE'S NEWSPAPER STORIES ABOUT COMPANIES; RIGHT?
11:56AM 25 A. YES.

11:56AM 1 Q. AND YOU TRY TO LOOK AT THOSE; RIGHT?

11:56AM 2 A. YES.

11:56AM 3 Q. BUT YOU DON'T MAKE INVESTMENT DECISIONS BASED ON WHAT YOU

11:56AM 4 READ IN THE NEWSPAPER, DO YOU?

11:56AM 5 A. IT DEPENDS WHAT THE NEWSPAPER SAYS. YOU CERTAINLY TAKE

11:57AM 6 INTO ACCOUNT WHAT YOU'RE GOING TO -- WHAT YOU READ AND

11:57AM 7 CROSS-REFERENCE IT.

11:57AM 8 Q. RIGHT.

11:57AM 9 BUT NEWSPAPER ARTICLES, LIKE, GET FACTS WRONG ALL OF THE

11:57AM 10 TIME, DON'T THEY?

11:57AM 11 A. THEY CAN.

11:57AM 12 Q. RIGHT.

11:57AM 13 SO YOU HAVE TO UNDERSTAND THAT WHEN YOU'RE READING A

11:57AM 14 NEWSPAPER ARTICLE; RIGHT?

11:57AM 15 A. YES.

11:57AM 16 Q. AND THAT'S WHY YOU HAVE TEAMS OF ANALYSTS AND PEOPLE TO

11:57AM 17 HELP YOU EVALUATE THESE COMPANIES; RIGHT?

11:57AM 18 A. WELL, AND ADVISORS AND SO FORTH, YES.

11:57AM 19 Q. RIGHT.

11:57AM 20 OKAY. NOW, ON DIRECT EXAMINATION, DO YOU REMEMBER YOU

11:57AM 21 WERE ASKED SOME QUESTIONS BY MR. BOSTIC ABOUT THE COMPRESSED

11:57AM 22 TIMEFRAME IN LATE 2013 TO MAKE AN INVESTMENT DECISION?

11:57AM 23 A. YES.

11:57AM 24 Q. AND I THINK YOU SAW AN EMAIL SORT OF ANNOUNCING THE

11:57AM 25 OPPORTUNITY THAT WAS AROUND DECEMBER 16TH, 2013.

11:57AM 1 DO YOU REMEMBER THAT?

11:58AM 2 A. YES.

11:58AM 3 Q. AND THAT THE INVESTMENT DECISION AND THE ACTUAL

11:58AM 4 INVESTMENT, THAT WAS MADE ON DECEMBER 31ST, 2013; RIGHT?

11:58AM 5 A. YES.

11:58AM 6 Q. OKAY. AND YOU HAD TO WORK REALLY HARD DURING THAT

11:58AM 7 APPROXIMATELY TWO WEEK PERIOD TO GET THIS DONE; RIGHT?

11:58AM 8 A. NO TIME TO SHAVE.

11:58AM 9 (LAUGHTER.)

11:58AM 10 BY MR. COOPERSMITH:

11:58AM 11 Q. RIGHT.

11:58AM 12 AND DO YOU HAVE A PHOTO FROM THAT ERA, MR. LUCAS?

11:58AM 13 A. I'M SURE I DO.

11:58AM 14 Q. OKAY. AND SO THERE WAS NOTHING THAT WAS FORCING YOUR FIRM

11:58AM 15 TO INVEST IN THERANOS AT THAT TIME; RIGHT?

11:58AM 16 A. CORRECT.

11:58AM 17 Q. YOU COULD HAVE DECIDED NOT TO INVEST?

11:58AM 18 A. THAT'S RIGHT.

11:58AM 19 Q. AND YOU COULD HAVE DECIDED TO ENJOY CHRISTMAS AND NOT DO

11:58AM 20 ALL OF THAT WORK; RIGHT?

11:58AM 21 A. THAT'S RIGHT.

11:58AM 22 Q. OKAY. SO YOU SAID SOMETHING ON DIRECT ABOUT WHY YOU

11:58AM 23 UNDERSTOOD THERE WAS A NEED FOR A COMPRESSED TIMEFRAME; RIGHT?

11:58AM 24 A. YES.

11:58AM 25 Q. AND IT HAD TO DO WITH ANOTHER TRANSACTION INVOLVING

11:59AM 1 WALGREENS?

11:59AM 2 A. YES.

11:59AM 3 Q. OKAY. AND LET'S JUST TALK ABOUT THAT FOR A MINUTE.

11:59AM 4 SO LET'S START WITH EXHIBIT 20698, WHICH SHOULD BE IN YOUR

11:59AM 5 BINDER.

11:59AM 6 A. YES.

11:59AM 7 Q. OKAY. THANK YOU.

11:59AM 8 YOU SEE THIS IS A THERANOS INC. INVESTORS' RIGHTS

11:59AM 9 AGREEMENT FROM FEBRUARY 3RD, 2006?

11:59AM 10 A. YES.

11:59AM 11 Q. AND THIS WAS A DOCUMENT THAT YOU SIGNED IN CONNECTION WITH

11:59AM 12 THE FIRST OF YOUR INVESTMENTS IN THERANOS BACK IN 2006;

11:59AM 13 CORRECT?

11:59AM 14 A. YEAH, I EXPECT SO, YES.

11:59AM 15 Q. RIGHT.

11:59AM 16 AND IF YOU WANT TO LOOK AT THAT, YOU CAN TURN TO PAGE 28

11:59AM 17 OF THE DOCUMENT. AND THESE ARE THE PAGES, AND THE NUMBERS ARE

11:59AM 18 IN THE MIDDLE AT THE BOTTOM.

12:00PM 19 A. YES.

12:00PM 20 Q. AND DO YOU SEE YOUR SIGNATURE THERE?

12:00PM 21 A. YES.

12:00PM 22 Q. SO, AGAIN, THIS WAS AN INVESTORS' RIGHTS AGREEMENT THAT

12:00PM 23 YOU SIGNED ON BEHALF OF BLACK DIAMOND VENTURES AROUND

12:00PM 24 FEBRUARY 3RD, 2006; CORRECT?

12:00PM 25 A. CORRECT.

12:00PM 1 MR. COOPERSMITH: YOUR HONOR, WE OFFER

12:00PM 2 EXHIBIT 20698.

12:00PM 3 MR. BOSTIC: NO OBJECTION.

12:00PM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:00PM 5 (DEFENDANT'S EXHIBIT 20698 WAS RECEIVED IN EVIDENCE.)

12:00PM 6 BY MR. COOPERSMITH:

12:00PM 7 Q. SO LET'S GO TO THE FIRST PAGE. THAT'S WHAT WE JUST

12:00PM 8 DESCRIBED.

12:00PM 9 AND IF YOU GO IN PARTICULAR -- WELL, FIRST OF ALL, LET ME

12:00PM 10 JUST ASK YOU THIS QUESTION. WHAT IS AN INVESTOR RIGHTS

12:00PM 11 AGREEMENT?

12:00PM 12 A. WELL, IT IS WHAT IT SAYS, IT'S INVESTORS' RIGHTS

12:00PM 13 AGREEMENT. IT SETS FORTH THE VARIOUS PROVISIONS THAT EACH

12:00PM 14 INVESTOR HAS IN MAKING AN INVESTMENT IN THE COMPANY.

12:01PM 15 Q. OKAY. AND, MR. LUCAS, SO THE VARIOUS PROVISIONS OF THIS

12:01PM 16 DOCUMENT SET FORTH DIFFERENT, YOU KNOW, TERMS AND CONDITIONS

12:01PM 17 ABOUT WHAT RIGHTS YOU HAVE AS AN INVESTOR; IS THAT RIGHT?

12:01PM 18 A. CORRECT.

12:01PM 19 Q. THAT'S FAIR IN A NUTSHELL?

12:01PM 20 AND IF YOU GO TO PAGE 20 OF THE EXHIBIT, THERE'S THOSE

12:01PM 21 NUMBERS IN THE VERY BOTTOM MIDDLE.

12:01PM 22 A. OKAY.

12:01PM 23 Q. AND YOU SEE THERE'S THIS PROVISION 4.1, RIGHT OF FIRST

12:01PM 24 OFFER TO SIGNIFICANT HOLDERS.

12:01PM 25 DO YOU SEE THAT?

12:01PM 1 A. YES.

12:01PM 2 Q. AND IT READS, "THE COMPANY HEREBY GRANTS TO EACH INVESTOR

12:01PM 3 WHO PURCHASES AT LEAST 268,244 SHARES OF SERIES B PREFERRED

12:01PM 4 STOCK (AS PRESENTLY CONSTITUTED AND SUBJECT TO SUBSEQUENT

12:01PM 5 ADJUSTMENTS," IT GOES ON, "THE RIGHT OF FIRST OFFER TO PURCHASE

12:02PM 6 ITS PRO RATA SHARE OF NEW SECURITIES (AS DEFINED)," AND THEN IT

12:02PM 7 GOES ON.

12:02PM 8 DO YOU SEE THAT?

12:02PM 9 A. YES.

12:02PM 10 Q. AND SO THIS WAS A PROVISION THAT ENTITLED YOU TO

12:02PM 11 PARTICIPATE IN FUTURE FUNDRAISING ROUNDS; CORRECT?

12:02PM 12 A. IT GAVE YOU THE RIGHT, NOT THE OBLIGATION.

12:02PM 13 Q. CORRECT?

12:02PM 14 A. CORRECT.

12:02PM 15 Q. AND SO IF THERANOS WAS ENGAGING IN NEW FUNDRAISING, IT

12:02PM 16 WOULD HAVE TO GO TO INVESTORS LIKE YOURSELF AND SAY, HEY, DO

12:02PM 17 YOU WANT TO PARTICIPATE IN THIS NEW FUNDRAISING ROUND?

12:02PM 18 A. YES.

12:02PM 19 Q. AND YOU COULD SAY YES OR NO?

12:02PM 20 A. CORRECT.

12:02PM 21 Q. AND THAT WOULD -- ANYONE WHO SIGNED THIS INVESTOR RIGHTS

12:02PM 22 AGREEMENT WOULD BASICALLY BE IN THAT SAME BOAT; RIGHT?

12:02PM 23 A. YEAH.

12:02PM 24 Q. SO IF THERANOS WAS HONORING ITS COMMITMENTS WHEN IT WAS

12:02PM 25 ENGAGING IN NEW FINANCING, IT WOULD HAVE TO FIRST COME TO

12:02PM 1 INVESTORS LIKE YOURSELF AND SAY, "DO YOU WANT TO PARTICIPATE IN
12:02PM 2 THIS OR NOT?"
12:02PM 3 RIGHT?
12:02PM 4 A. YES, IN YOUR PRO RATA RIGHT.
12:02PM 5 Q. RIGHT.
12:02PM 6 A. YES.
12:02PM 7 Q. SO IN THAT LATE 2013 TIMEFRAME, YOU KNEW THAT THERANOS WAS
12:03PM 8 ABOUT TO EMBARK ON A NEW FUNDRAISING ROUND; RIGHT?
12:03PM 9 A. YES.
12:03PM 10 Q. AND IT WAS APPROACHING YOU FIRST AND OTHER INVESTORS TO
12:03PM 11 SEE IF YOU WANTED TO PARTICIPATE; RIGHT?
12:03PM 12 A. I EXPECT THAT WAS THE CASE.
12:03PM 13 Q. RIGHT.
12:03PM 14 A. I DON'T REMEMBER, BUT, YEAH.
12:03PM 15 Q. SO IF THAT WAS THE CASE, THAT WOULD BE THERANOS HONORING
12:03PM 16 ITS AGREEMENT FROM ALL OF THE WAY BACK IN 2006; RIGHT?
12:03PM 17 A. YES.
12:03PM 18 Q. OKAY. LET'S TAKE A LOOK AT ANOTHER DOCUMENT WHICH IS
12:03PM 19 ALREADY IN EVIDENCE, AND THAT SHOULD BE DOCUMENT 1387.
12:03PM 20 IT SHOULD BE IN YOUR BINDER, MR. LUCAS.
12:03PM 21 A. SHOULD I LOOK ON THE SCREEN?
12:03PM 22 Q. YOU KNOW, WHATEVER YOU PREFER. IF IT'S EASIER FOR YOU TO
12:03PM 23 DO A HARD COPY, IT'S IN THE BINDER. BUT IF YOU WANT TO LOOK AT
12:03PM 24 THE SCREEN, THAT'S ALSO FINE.
12:03PM 25 A. OKAY.

12:03PM 1 Q. OKAY. SO YOU SEE THAT THIS IS A LETTER DATED
12:04PM 2 DECEMBER 31ST, 2013?
12:04PM 3 A. YES.
12:04PM 4 Q. AND IT'S ADDRESSED TO THERANOS?
12:04PM 5 A. YES.
12:04PM 6 Q. AND YOU SEE THAT THIS IS A LETTER THAT REFLECTS AN
12:04PM 7 AMENDMENT TO THE AGREEMENT BETWEEN WALGREENS AND THERANOS?
12:04PM 8 A. I DON'T SEE WHERE IT SAYS WALGREENS YET, BUT --
12:04PM 9 Q. OKAY. WELL, JUST TAKE A MINUTE OR A SECOND EVEN TO READ
12:04PM 10 THE FIRST PARAGRAPH.
12:04PM 11 A. YES.
12:04PM 12 Q. OKAY. SO THIS IS AN AMENDMENT TO THE AGREEMENT BETWEEN
12:04PM 13 WALGREENS AND THERANOS?
12:04PM 14 OKAY. AND YOU DIDN'T ACTUALLY SEE THIS AT THE TIME OF
12:04PM 15 YOUR INVESTMENT; RIGHT?
12:04PM 16 A. NO.
12:04PM 17 Q. OKAY. AND IF YOU GO TO THE VERY LAST PAGE, YOU SEE IT'S
12:04PM 18 SIGNED BY A VICE PRESIDENT AT WALGREENS AS WELL AS MS. HOLMES?
12:05PM 19 DO YOU SEE THAT?
12:05PM 20 A. YES.
12:05PM 21 Q. AND LET'S GO, FIRST OF ALL, TO PARAGRAPH 7, WHICH IS ON
12:05PM 22 PAGE 5 OF THE EXHIBIT.
12:05PM 23 DO YOU SEE THAT ADDITIONAL EQUITY RIGHTS SECTION?
12:05PM 24 A. YES.
12:05PM 25 Q. AND HERE IT SAYS, "THE PARTIES," WALGREENS AND THERANOS,

12:05PM 1 "AGREE THAT THE \$50 MILLION OF THE \$75 MILLION PAYMENT MADE BY
12:05PM 2 WALGREENS PURSUANT TO SECTION 3 ABOVE MAY BE CONVERTED, AT
12:05PM 3 WALGREENS OPTION, INTO EQUITY ON SUCH TERMS AS ARE MADE
12:05PM 4 AVAILABLE TO INVESTORS IN THERANOS'S PLANNED EQUITY FINANCING
12:05PM 5 IN THE FIRST QUARTER OF 2014."

12:05PM 6 RIGHT?

12:05PM 7 AND THEN IT GOES ON TO SAY THAT, "THE PARTIES ALSO AGREE
12:05PM 8 THAT UPON SIGNING THIS AGREEMENT, WALGREENS WILL RECEIVE AN
12:05PM 9 OPTION TO PURCHASE UP TO \$50 MILLION IN THERANOS EQUITY ON THE
12:05PM 10 TERMS MADE AVAILABLE TO INVESTORS WHO INVESTED IN THE PRIOR
12:05PM 11 EQUITY PURCHASING (E.G. \$15 A SHARE) ."

12:05PM 12 DO YOU SEE THAT?

12:05PM 13 A. YES.

12:05PM 14 Q. AND THAT \$15 A SHARE IS WHAT YOU PAID FOR YOUR INVESTMENT;
12:06PM 15 RIGHT?

12:06PM 16 A. YES.

12:06PM 17 Q. AND WHEN WE TALK ABOUT EQUITY, WE'RE TALKING ABOUT
12:06PM 18 PURCHASING STOCK?

12:06PM 19 A. PURCHASING PREFERRED STOCK IN THIS CASE.

12:06PM 20 Q. AND PREFERRED STOCK IS A FORM OF EQUITY?

12:06PM 21 A. YES.

12:06PM 22 Q. OKAY. AND IT REFERENCES IN THE PARAGRAPH THAT I JUST READ
12:06PM 23 SECTION 3. SO CAN WE LOOK AT THAT ON THE PREVIOUS PAGE.

12:06PM 24 AND YOU SEE IT SAYS INNOVATION FEE?

12:06PM 25 A. YES.

12:06PM 1 Q. OKAY. AND YOU SEE IT SAYS THAT "AS DETAILED IN SECTION 6
12:06PM 2 OF SCHEDULE B OF THE AGREEMENT, WALGREENS IS TO MAKE AN
12:06PM 3 INNOVATION FEE PAYMENT OF UP TO \$100 MILLION TO THERANOS."

12:06PM 4 DO YOU SEE THAT?

12:06PM 5 A. YES.

12:06PM 6 Q. AND THEN IT SAYS, GOING A COUPLE SENTENCES MORE, "TO THAT
12:06PM 7 END (AND SUBJECT TO SECTION 7) CAN," WHICH WE JUST LOOKED AT,
12:06PM 8 "THE PARTIES HAVE AGREED THAT WALGREENS SHALL ACCELERATE
12:07PM 9 PAYMENT OF THE INNOVATION FEE SO THAT \$75 MILLION OF THE
12:07PM 10 PRE-PURCHASE WILL BECOME IMMEDIATELY DUE AND PAYABLE AT THE
12:07PM 11 CLOSE OF BUSINESS ON DECEMBER 31ST, 2013."

12:07PM 12 DO YOU SEE THAT?

12:07PM 13 A. YES.

12:07PM 14 Q. AND IT GOES ON TO SAY THAT "WALGREENS COMMITS TO WIRE
12:07PM 15 IMMEDIATELY AVAILABLE FUNDS IN SUCH AMOUNT OF FIVE BUSINESS
12:07PM 16 DAYS AFTER THE DATE HEREOF."

12:07PM 17 DO YOU SEE THAT?

12:07PM 18 A. YES.

12:07PM 19 Q. AND THIS WAS SIGNED ON DECEMBER 31ST, 2013?

12:07PM 20 A. YES.

12:07PM 21 Q. OKAY. NOW, BASED ON YOUR EXPERIENCE IN BUSINESS AND AS AN
12:07PM 22 INVESTOR, AFTER AN AGREEMENT WHERE -- ACTUALLY I'LL WITHDRAW
12:07PM 23 THAT. LET ME SHOW YOU ONE OTHER THING BEFORE I ASK THAT.

12:07PM 24 LET'S GO TO PARAGRAPH 1 OF THE AGREEMENT.

12:07PM 25 DO YOU SEE THE NATIONAL ROLLOUT; NEW MARKET ENTRY SECTION?

12:07PM 1

A. YES.

12:07PM 2

Q. AND IT SAYS, "THE PARTIES SHALL WORK TOGETHER TO DEVELOP A FORECAST THAT DETAILS THE ANTICIPATED ROLLOUT DATES FOR THERANOS SERVICES IN INDIVIDUAL U.S. STATES/TERRITORIES."

12:07PM 3

12:07PM 4

12:08PM 5

DO YOU SEE THAT?

12:08PM 6

A. YES.

12:08PM 7

Q. AND IT GOES ON TO SAY, "THE PARTIES ARE COMMITTED TO TAKING ALL STEPS REASONABLE NECESSARY TO ENSURE A SUCCESSFUL NATIONAL ROLLOUT OF THE THERANOS SERVICES."

12:08PM 8

12:08PM 9

12:08PM 10

AND IT GOES ON.

12:08PM 11

DO YOU SEE THAT?

12:08PM 12

A. YES.

12:08PM 13

Q. AND SO HAVING THAT IN MIND, THAT AGREEMENT, AS WELL AS THE AGREEMENT FOR WALGREENS TO ACCELERATE PAYMENT OF A \$75 MILLION INNOVATION FEE, BASED ON YOUR EXPERIENCE AS AN INVESTOR, YOU WOULD EXPECT THAT A DEAL LIKE THIS WOULD INCREASE THE VALUE OF THERANOS?

12:08PM 14

12:08PM 15

12:08PM 16

12:08PM 17

12:08PM 18

MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

12:08PM 19

702, 401.

12:08PM 20

THE COURT: I'LL SUSTAIN THE OBJECTION AS YOU FRAMED THE QUESTION.

12:08PM 21

12:08PM 22

MR. COOPERSMITH: OKAY. LET ME SEE IF I CAN ASK SOME OTHER QUESTIONS, YOUR HONOR.

12:08PM 23

12:08PM 24

Q. SO, MR. LUCAS, YOU ARE FAMILIAR WITH THE CONCEPT OF VALUE OF COMPANIES?

12:08PM 25

12:08PM 1 A. YES.

12:08PM 2 Q. AND THAT IN THE VENTURE CAPITAL WORLD THAT YOU LIVE IN,

12:09PM 3 THAT'S AN IMPORTANT CONCEPT TO UNDERSTAND WHAT YOUR INVESTMENT

12:09PM 4 MAY BE WORTH AT ANY ONE TIME; RIGHT?

12:09PM 5 A. YES.

12:09PM 6 Q. AND IT'S ALSO AN IMPORTANT CONCEPT TO UNDERSTAND WHETHER

12:09PM 7 THE PRICE THAT YOU'RE PAYING PER SHARE OF STOCK IS A FAIR

12:09PM 8 PRICE; RIGHT?

12:09PM 9 A. YES.

12:09PM 10 Q. BECAUSE YOU WOULDN'T WANT TO OVERPAY IF A COMPANY WAS

12:09PM 11 VALUED VERY LOW, YOU WOULDN'T WANT TO PAY MORE PER SHARE;

12:09PM 12 RIGHT?

12:09PM 13 A. THAT'S RIGHT.

12:09PM 14 Q. AND THE COMPANY, AS YOU UNDERSTAND IT, WOULDN'T WANT TO

12:09PM 15 HAVE YOU PAY MUCH LOWER THAN WHAT THE REAL VALUE OF THE SHARES

12:09PM 16 WERE WORTH; RIGHT?

12:09PM 17 A. YES.

12:09PM 18 Q. AND YOU UNDERSTAND THAT THERE'S A CORRELATION BETWEEN THE

12:09PM 19 VALUE OF THE COMPANY AND THE PRICE PER SHARE?

12:09PM 20 DO YOU UNDERSTAND THAT?

12:09PM 21 A. I DO.

12:09PM 22 Q. ALL RIGHT. AND THE HIGHER THE VALUE OF THE COMPANY, THE

12:09PM 23 GREATER THE PRICE PER SHARE WOULD BE; RIGHT?

12:09PM 24 A. YES.

12:09PM 25 Q. AND BY THE SAME TOKEN, THE LOWER THE VALUE OF THE COMPANY,

12:09PM 1 THE LOWER THE VALUE OF THE COMPANY WOULD BE.

12:09PM 2 IS THAT FAIR?

12:09PM 3 A. YES.

12:09PM 4 Q. AND YOU UNDERSTAND THAT THERE ARE A LOT OF DIFFERENT
12:10PM 5 FACTORS THAT WOULD AFFECT THE VALUE OF THE COMPANY, AND,
12:10PM 6 THEREFORE, THE SHARE PRICE?

12:10PM 7 A. YES.

12:10PM 8 Q. AND ONE FACTOR WOULD BE WHAT THE COMPANY EXPECTS THEIR
12:10PM 9 FUTURE REVENUE WOULD BE; IS THAT CORRECT?

12:10PM 10 A. CORRECT.

12:10PM 11 Q. AND ANOTHER FACTOR WOULD BE THE COLLECTION OF TALENTED
12:10PM 12 PERSONNEL THAT THE COMPANY HAS ASSEMBLED TO WORK FOR IT?

12:10PM 13 A. CORRECT.

12:10PM 14 Q. AND ANOTHER VALUE WOULD BE WHAT RELATIONSHIPS AND
12:10PM 15 CONTRACTS THE COMPANY HAS?

12:10PM 16 A. THAT'S RIGHT.

12:10PM 17 Q. AND FOR A COMPANY LIKE THERANOS, HAVING A RELATIONSHIP
12:10PM 18 WITH WALGREENS WOULD BE A FACTOR IN THE VALUE OF THE COMPANY?

12:10PM 19 A. ABSOLUTELY.

12:10PM 20 Q. AND IF WALGREENS MAKES A COMMITMENT, AS WE HAVE JUST SEEN,
12:10PM 21 TO PUT IN \$75 MILLION, AND IN A CONTRACT, SAY, THEY'RE
12:10PM 22 COMMITTED TO A NATIONAL ROLLOUT, IN YOUR EXPERIENCE, WOULD THAT
12:10PM 23 INCREASE THE SHARE PRICE?

12:10PM 24 A. YES, IT WOULD.

12:10PM 25 Q. OKAY. AND THAT WAS GOING TO HAPPEN AFTER DECEMBER 31ST,

12:10PM 1 2013; CORRECT?

12:11PM 2 A. CORRECT.

12:11PM 3 Q. AND YOU WERE GIVEN A CHANCE TO INVEST BEFORE THAT

12:11PM 4 HAPPENED?

12:11PM 5 A. CORRECT.

12:11PM 6 Q. AND YOU UNDERSTOOD THAT AFTER THE FIRST OF THE YEAR OF

12:11PM 7 2014, THE PRICE THAT YOU MIGHT HAVE TO PAY FOR THERANOS MIGHT

12:11PM 8 BE HIGHER; RIGHT?

12:11PM 9 A. ONE WOULD HOPE SO, YEP.

12:11PM 10 Q. AND YOU WERE ACTUALLY GIVEN AN OPPORTUNITY TO INVEST IN

12:11PM 11 THERANOS AT THAT HIGHER PRICE IN JANUARY OF 2014?

12:11PM 12 A. YES.

12:11PM 13 Q. AND YOU DECIDED NOT TO?

12:11PM 14 A. CORRECT.

12:11PM 15 Q. BECAUSE YOU HAD PURCHASED AT THE EARLIER \$15 PRICE?

12:11PM 16 A. WE ALREADY HUSTLED AND GOT IT DONE.

12:11PM 17 Q. YOU GOT IT DONE AND GOT THE BETTER PRICE; RIGHT?

12:11PM 18 A. YES.

12:11PM 19 Q. OKAY. DO YOU REMEMBER BEFORE YOU ACTUALLY INVESTED, OR

12:12PM 20 YOUR FIRM VESTED, YOU WERE ON A CONFERENCE CALL WITH SOME OTHER

12:12PM 21 INVESTORS AND MS. HOLMES AS WELL?

12:12PM 22 A. YES.

12:12PM 23 Q. AND THAT WAS ON DECEMBER 20TH, 2013?

12:12PM 24 A. YES.

12:12PM 25 Q. AND ONE OF THE PEOPLE ON THAT CALL WAS BRYAN TOLBERT?

12:12PM 1 A. YES.

12:12PM 2 Q. AND ONE OF THE PEOPLE ON THAT CALL WAS CRAIG HALL?

12:12PM 3 A. YES, HE WAS ALSO, YES.

12:12PM 4 Q. OKAY. ON DIRECT EXAMINATION, THE GOVERNMENT ASKED YOU

12:12PM 5 SOME QUESTIONS ABOUT INFORMATION THAT YOU HAD RECEIVED FROM

12:12PM 6 MS. HOLMES ABOUT MILITARY RELATIONSHIPS THAT THERANOS HAD?

12:12PM 7 A. YES.

12:12PM 8 Q. YOU DON'T REMEMBER THE EXACT WORDS THAT MS. HOLMES SAID AT

12:12PM 9 THIS POINT; CORRECT?

12:12PM 10 A. OBVIOUSLY I DON'T REMEMBER THE EXACT WORDS, BUT I

12:13PM 11 CERTAINLY REMEMBER THE INTENT AND WHAT WAS SAID.

12:13PM 12 Q. AND YOU TOOK AWAY FROM WHATEVER SHE SAID THAT THERE WAS A

12:13PM 13 RELATIONSHIP WITH THE MILITARY WHERE THERANOS WAS -- WHERE THE

12:13PM 14 MILITARY WAS USING THERANOS DEVICES IN THE FIELD?

12:13PM 15 A. IN THE FIELD.

12:13PM 16 Q. THAT'S WHAT YOU TOOK AWAY FROM WHATEVER WAS SAID?

12:13PM 17 A. CORRECT.

12:13PM 18 Q. BUT YOU DON'T REMEMBER THE EXACT WORDS?

12:13PM 19 A. CORRECT.

12:13PM 20 Q. OKAY. MAYBE THIS IS OBVIOUS FROM THE QUESTIONS THAT WAS

12:13PM 21 ASKED OF YOU EARLIER, BUT MR. BALWANI WAS NOT ON THAT CALL ON

12:13PM 22 DECEMBER 20TH, 2013?

12:13PM 23 A. NOT THAT I KNOW OF.

12:13PM 24 Q. GOING WITH THE TOPIC OF THE 2013 INVESTMENT THAT YOU MADE,

12:13PM 25 YOU UNDERSTOOD THAT FOR THERANOS TO EMBARK ON THAT KIND OF

12:14PM 1 FINANCING THROUGH INVESTORS, THE BOARD WOULD HAVE TO APPROVE

12:14PM 2 THOSE ACTIONS?

12:14PM 3 A. YES.

12:14PM 4 Q. AND YOU KNEW WHO THE MEMBERS OF THE BOARD WERE; RIGHT?

12:14PM 5 A. I COULDN'T TELL YOU NOW, BUT AT THE TIME, SURE. I WOULD

12:14PM 6 HAVE KNOWN.

12:14PM 7 Q. OKAY. AND THE COMPOSITION OF THE THERANOS BOARD AT THE

12:14PM 8 TIME GAVE YOU SOME CONFIDENCE; IS THAT RIGHT?

12:14PM 9 A. ABSOLUTELY.

12:14PM 10 Q. GOING BACK TO THE TECHNOLOGY FOR A MINUTE, YOU UNDERSTOOD

12:14PM 11 THAT --

12:14PM 12 A. UH-HUH.

12:14PM 13 Q. -- THAT EVEN AFTER THE LAUNCH WITH WALGREENS, THAT

12:14PM 14 THERANOS WOULD CONTINUE TO DEVELOP ITS SMALL SAMPLE ASSAYS?

12:14PM 15 A. YES.

12:14PM 16 Q. AND IT WOULD -- SO A COMPANY COULD BE BOTH TRYING TO SCALE

12:15PM 17 UP ITS OPERATIONS BY ROLLING OUT WITH WALGREENS AND ALSO

12:15PM 18 CONTINUE TO BE A DEVELOPING COMPANY AT THE SAME TIME?

12:15PM 19 A. YES.

12:15PM 20 Q. MR. BOSTIC ASKED YOU ON DIRECT A QUESTION ABOUT WHETHER IT

12:15PM 21 MATTERED TO YOU IF THE THERANOS BLOOD TESTING ANALYZER COULD

12:15PM 22 ONLY DO 12 TESTS.

12:15PM 23 DO YOU REMEMBER THAT QUESTION?

12:15PM 24 A. YES.

12:15PM 25 Q. AND YOU DON'T KNOW IF IT'S TRUE THAT THE THERANOS

12:15PM 1 TECHNOLOGY, THE ANALYZER COULD ONLY DO 12 TESTS; CORRECT?

12:15PM 2 A. I DID NOT KNOW THAT.

12:15PM 3 Q. IN OTHER WORDS, AS YOU SIT HERE TODAY, IT MIGHT HAVE BEEN
12:15PM 4 CAPABLE OF DOING A LOT MORE TESTS?

12:15PM 5 A. I BELIEVE IT WAS CAPABLE OF DOING MORE THAN 12 TESTS.

12:15PM 6 Q. DOZENS; RIGHT?

12:15PM 7 A. THAT'S WHAT I SAID, YEAH.

12:15PM 8 Q. RIGHT.

12:15PM 9 AND WHEN YOU INVEST IN A COMPANY LIKE THERANOS, AS AN
12:15PM 10 INVESTOR, YOU DON'T EXPECT TO BE INVOLVED IN EVERY DECISION
12:16PM 11 THAT MANAGEMENT OF THE COMPANY MAKES; RIGHT?

12:16PM 12 A. NO.

12:16PM 13 Q. OR THAT THE BOARD MAKES?

12:16PM 14 A. CERTAINLY NOT.

12:16PM 15 Q. AND THERE ARE SOME LIMITED THINGS THAT AN INVESTOR MIGHT
12:16PM 16 GET THE VOTE ON; RIGHT?

12:16PM 17 A. DEPENDING ON THE SIZE OF YOUR INVESTMENT, YES, IT COULD BE
12:16PM 18 VERY LIMITED.

12:16PM 19 Q. RIGHT.

12:16PM 20 BUT DAY-TO-DAY DECISIONS, WHAT BUSINESS DECISIONS THE
12:16PM 21 COMPANY MAKES, THAT'S NOT SOMETHING THAT INVESTORS GET INVOLVED
12:16PM 22 WITH?

12:16PM 23 A. AGAIN, IT DEPENDS ON THE SIZE OF THE INVESTOR AND WHETHER
12:16PM 24 THE INVESTOR IS ON THE BOARD.

12:16PM 25 Q. OKAY. BUT YOU WEREN'T EXPECTING TO BE INVOLVED IN

12:16PM 1 DAY-TO-DAY DECISION MAKING AT THERANOS?

12:16PM 2 A. THAT'S CORRECT.

12:16PM 3 Q. OKAY. AND YOU WOULD EXPECT THE MANAGEMENT OF THE COMPANY
12:16PM 4 AND THE BOARD TO MAKE THE DECISIONS THAT THEY THOUGHT WERE AS
12:16PM 5 PRUDENT AS THEY COULD POSSIBLY MAKE TO BENEFIT EVERYBODY,
12:17PM 6 INCLUDING INVESTORS?

12:17PM 7 A. YES.

12:17PM 8 Q. RIGHT.

12:17PM 9 AND IF, IN A THERANOS LAB OPERATION, THEY DECIDED TO USE
12:17PM 10 ONE ANALYZER VERSUS A DIFFERENT ANALYZER, THAT'S NOT SOMETHING
12:17PM 11 THAT YOU WOULD EXPECT TO HAVE INPUT INTO AS AN INVESTOR; RIGHT?

12:17PM 12 A. NO. ONE WOULD BELIEVE THAT IT WAS THERANOS'S ANALYZERS.

12:17PM 13 Q. RIGHT.

12:17PM 14 BUT IF THERANOS HAD THE CAPABILITY TO RUN MANY BLOOD TESTS
12:17PM 15 ON ITS ANALYZER, BUT DECIDED THAT IT WOULD NOT MAKE ECONOMIC
12:17PM 16 SENSE TO DO THAT RIGHT AWAY, AND INSTEAD USE A COMMERCIAL
12:17PM 17 ANALYZER, THAT'S NOT A BUSINESS DECISION THAT YOU WOULD EXPECT
12:17PM 18 TO BE INVOLVED IN AS AN INVESTOR, IS IT?

12:17PM 19 A. THAT WOULD HAVE BEEN SHOCKING TO ME TO KNOW.

12:17PM 20 Q. OKAY. BECAUSE YOU THOUGHT THAT THEY WERE USING THEIR OWN
12:17PM 21 ANALYZERS; CORRECT?

12:17PM 22 A. CORRECT.

12:17PM 23 Q. BUT IF IT MADE BUSINESS SENSE TO DO IT DIFFERENTLY FOR
12:17PM 24 SOME ASSAY OR CERTAIN ASSAYS, THE MANAGEMENT HAD A RIGHT TO
12:17PM 25 MAKE THAT DECISION; RIGHT?

12:18PM 1 A. THEY HAVE A RIGHT TO MAKE ANY DECISION. AND --

12:18PM 2 Q. AND IF -- SORRY.

12:18PM 3 A. AGAIN, I KNEW THAT SOME TESTS THERANOS COULD NOT DO ON
12:18PM 4 THEIR OWN MACHINES, AND THEY'D HAVE TO BE RUN ON A COMMERCIAL
12:18PM 5 ANALYZER.

12:18PM 6 Q. RIGHT.

12:18PM 7 SO IF THERANOS DECIDED IT COULD DO AN ASSAY ON THEIR
12:18PM 8 MACHINE, BUT IT MADE MORE SENSE TO KEEP THAT GOING ON THE
12:18PM 9 COMMERCIAL ANALYZER, AS YOU'VE JUST SAID, THAT'S A BUSINESS
12:18PM 10 DECISION THAT THEY COULD MAKE; RIGHT?

12:18PM 11 A. THEY COULD, SURE.

12:18PM 12 Q. I THINK YOU SAID YOU UNDERSTOOD THE CONCEPT OF COMMONLY
12:18PM 13 ORDERED TESTS?

12:18PM 14 A. YES.

12:18PM 15 Q. AND SO THERE ARE SOME BLOOD TESTS, AS YOU UNDERSTOOD IT,
12:18PM 16 THAT WERE MORE COMMON FOR PATIENTS AND DOCTORS TO WANT TO GET;
12:18PM 17 RIGHT?

12:18PM 18 A. YES.

12:18PM 19 Q. AND THERE ARE OTHER BLOOD TESTS THAT MIGHT NOT BE SO
12:18PM 20 COMMON; RIGHT?

12:18PM 21 A. YES.

12:18PM 22 Q. AND THAT YOU UNDERSTOOD THAT THERANOS WAS TRYING TO USE
12:18PM 23 ITS TECHNOLOGY FOR THE MORE COMMONLY ORDERED BLOOD TESTS;
12:18PM 24 RIGHT?

12:18PM 25 A. THAT WAS CERTAINLY THE FIRST PRIORITY.

12:19PM 1 Q. AND THOSE WERE THE DOZENS THAT YOU WERE --

12:19PM 2 A. YES.

12:19PM 3 Q. OKAY. BUT THEN FOR OTHERS LESS COMMONLY ORDERED, YOU
12:19PM 4 UNDERSTOOD THAT THEY WOULD HAVE TO USE SOME DIFFERENT TYPE OF
12:19PM 5 ANALYZER?

12:19PM 6 A. SURE.

12:19PM 7 Q. OKAY. AND DID YOU KNOW, MR. LUCAS, WHILE YOU WERE AN
12:19PM 8 INVESTOR IN THERANOS, THAT THERANOS'S RESEARCH AND DEVELOPMENT
12:19PM 9 TEAM HAD DEVELOPED HUNDREDS OF SMALL SAMPLE ASSAYS?

12:19PM 10 A. NO.

12:19PM 11 Q. BUT DOES THAT SURPRISE YOU?

12:19PM 12 A. WELL, THAT WAS, THAT WAS THE FUTURE. SO IF THEY DID AND
12:19PM 13 THEY DID WORK, GREAT.

12:19PM 14 Q. OKAY. DURING YOUR DIRECT EXAMINATION, YOU LOOKED AT AN
12:20PM 15 EXHIBIT THAT I'D LIKE TO TAKE YOU BACK TO, AND THAT'S
12:20PM 16 EXHIBIT 1770, 1770.

12:20PM 17 AND THAT WOULD, I THINK, BE IN THE GOVERNMENT'S --

12:20PM 18 A. I'M LOOKING IN HERE.

12:20PM 19 Q. YOU CAN DO THAT. I THINK WE CAN PUT IT UP ON THE SCREEN
12:20PM 20 BECAUSE IT'S IN EVIDENCE, IF THAT'S EASIER FOR YOU?

12:20PM 21 A. UH-HUH.

12:20PM 22 Q. AND THIS IS A DOCUMENT THAT THE GOVERNMENT SHOWED YOU.
12:20PM 23 IT'S 1770.

12:20PM 24 DO YOU SEE THAT?

12:20PM 25 A. THANK YOU. YES.

12:20PM 1 Q. I'M NOT SURE, MR. ALLEN, WE HAVE THE RIGHT EXHIBIT UP.

12:20PM 2 OH, I SEE. OKAY. YEAH, LET'S LOOK AT THE ONE ON THE

12:20PM 3 SCREEN.

12:20PM 4 SO YOU SEE THE FIRST PAGE. AND IF YOU COULD GO TO THE

12:20PM 5 THIRD PAGE.

12:20PM 6 THAT'S A PICTURE OF MS. HOLMES; RIGHT?

12:21PM 7 A. YES.

12:21PM 8 Q. ON THE COVER OF "FORTUNE" MAGAZINE?

12:21PM 9 A. YES.

12:21PM 10 Q. RIGHT.

12:21PM 11 AND THIS WAS AN ARTICLE IN "FORTUNE" THAT YOU READ, BUT

12:21PM 12 THAT WAS AFTER YOUR INVESTMENT; RIGHT?

12:21PM 13 A. YES. I DON'T SEE THE DATE HERE, BUT I BELIEVE IT WAS --

12:21PM 14 SURE, I'M WELL FAMILIAR WITH THE ARTICLE. I JUST FORGET WHEN

12:21PM 15 IT CAME OUT.

12:21PM 16 Q. OKAY. BUT IF THE ARTICLE CAME OUT IN THE SUMMER OF 2014,

12:21PM 17 THAT WOULD BE AFTER YOUR INVESTMENT; RIGHT?

12:21PM 18 A. YES.

12:21PM 19 Q. OKAY. AND BELOW THAT, THOUGH, THERE'S THIS ANECDOTE.

12:21PM 20 DO YOU SEE THAT? AND I DON'T THINK MR. BOSTIC REVIEWED

12:21PM 21 THAT WITH YOU.

12:21PM 22 THIS SAYS, "AN ANECDOTE FROM OUR TEAM RE: A RECENT

12:21PM 23 CUSTOMER EXPERIENCE IN SCOTTSDALE."

12:21PM 24 DO YOU SEE THAT?

12:21PM 25 A. YES.

12:21PM 1 Q. AND IT SAYS, "TODAY A QUADRUPE AMPUTEE VISITED THERANOS
12:22PM 2 AT THE WALGREENS LOCATED IN SCOTTSDALE. DUE TO HIS CONDITION,
12:22PM 3 HE REGULARLY RECEIVES ARTERIAL DRAWS FROM HIS NECK FOR BASIC
12:22PM 4 BLOOD WORK. OUR ABILITY TO RUN HIS TESTS FROM A FEW DROPS OF
12:22PM 5 BLOOD ENABLED OUR TEAM TO COLLECT HIS SAMPLE IN A NANOTAINER
12:22PM 6 FROM AN APPENDAGE FOR THE FIRST TIME. AT THE END OF THE
12:22PM 7 COLLECTION THE MAN WAS OVERWHELMED WITH EMOTION. HE EXPLAINED
12:22PM 8 TO HIS GIRLFRIEND THAT HE WOULD NEVER AGAIN HAVE TO GET A
12:22PM 9 NEEDLE STUCK INTO HIS NECK. WITH TEARS IN HIS EYES HE THANKED
12:22PM 10 OUR TEAM FOR OUR DEDICATION TO MAKING PEOPLE'S LIFE BETTER. HE
12:22PM 11 DECLARED HIMSELF A CUSTOMER FOR LIFE."

12:22PM 12 DO YOU SEE THAT?

12:22PM 13 A. I DO.

12:22PM 14 Q. AND YOU DON'T KNOW THIS INDIVIDUAL, I AM ASSUMING; RIGHT?

12:22PM 15 A. I DO NOT.

12:22PM 16 Q. BUT THIS WAS PART OF, AS YOU UNDERSTOOD IT, THE THERANOS
12:22PM 17 MISSION TO MAKE IT EASIER FOR PEOPLE TO GET THE CARE THEY
12:22PM 18 NEEDED; RIGHT?

12:22PM 19 A. YES.

12:22PM 20 Q. OKAY. AND LET'S GO TO THE NEXT PAGE.

12:22PM 21 AND THIS IS FROM SOMEONE NAMED FRAN.

12:22PM 22 DO YOU SEE THAT?

12:22PM 23 A. YES.

12:22PM 24 Q. AND THIS IS ON MAY 22ND, 2014. LET'S LOOK AT THIS AS
12:23PM 25 WELL.

12:23PM 1 SHE SAYS, "THIS IS AN EMAIL I SENT TO ALL EMAIL ADDRESSES
12:23PM 2 I HAVE. USE IT, IF YOU CAN, TO HELP OTHERS.

12:23PM 3 "HI EVERYONE,

12:23PM 4 "YES, ME AGAIN," WITH A LOT OF I'S. "I KNOW, I KNOW YOU
12:23PM 5 NEVER HEAR FROM ME AND NOW TWO EMAILS. C'EST LA VIE.

12:23PM 6 "AS MOST, IF NOT ALL OF YOU KNOW, I'VE BEEN TYPE 1
12:23PM 7 DIABETIC SINCE AGE OF 2. OK SO I SHOULD SAY 3 BECAUSE I DID
12:23PM 8 GET OUT OF THE HOSPITAL ON THE THIRD BIRTHDAY BUT DAMMIT I AM
12:23PM 9 TAKING CREDIT FOR EVERY SECOND OF THIS DISEASE.

12:23PM 10 "I'VE BEEN GETTING BLOOD DRAWN EVERY 2-3 MONTHS FOR
12:23PM 11 51 YEARS AND 27 DAYS. AT TIMES EVEN MORE OFTEN THANKS TO
12:23PM 12 STUPID ME CHOOSING TO GET ON A MOTORCYCLE AND DRIVE IT ON THE
12:23PM 13 FREEWAY, IF DRIVING IS WHAT YOU WANT TO CALL IT!

12:23PM 14 "I THINK YOU ALL HAVE CLEAR PICTURE THAT I'VE BEEN STUCK
12:23PM 15 BY PHLEBOTOMISTS, AKA VAMPIRES MANY TIMES OVER. I CAN COUNT ON
12:24PM 16 TWO HANDS THE NUMBER OF VAMPIRES I WOULD HAVE HIRED TO BE MY
12:24PM 17 OWN PERSONAL PHLEBOTOMIST IF I HAD THE MONEY. GOING FOR LAB
12:24PM 18 WORK HAS NOT BEEN AN EASY PART OF DIABETES.

12:24PM 19 "HOWEVER, THAT HAS CHANGED. I WENT TO THERANOS WEDNESDAY
12:24PM 20 MORNING FOR MY LABS. THERANOS HAS ITS OWN LOCATIONS AND THE
12:24PM 21 ONE I WENT TO WAS IN A WALGREENS. I HAD THE SAME OLD BLOOD
12:24PM 22 TEST THAT I'VE BEEN HAVING DONE EVERY 2-3 MONTHS WHERE THEY
12:24PM 23 NORMALLY TAKE FOUR VIALS OF BLOOD. WEDNESDAY MORNING I HAD
12:24PM 24 THREE FINGER POKES AND THREE ADORABLE ITTY BITTY NANOTAINERS OF
12:24PM 25 BLOOD TAKEN. IT WAS AWESOME, AMAZING, INTERESTING, PAIN FREE,

12:24PM 1 STRESS FREE, AND DOWN RIGHT FUN EXPERIENCE. I NEVER IMAGINED
12:24PM 2 IN MY LIFETIME I WOULD EVER SAY THOSE WORDS ABOUT HAVING LABS
12:24PM 3 DONE."

12:24PM 4 THEN LET'S GO ON.

12:24PM 5 "EVERYONE, WHICH IS ABOUT SIX PEOPLE, FROM THERANOS I HAVE
12:24PM 6 SPOKEN WITH HAVE BEEN FRIENDLY, PROFESSIONAL, RESPECTFUL, AND A
12:24PM 7 PLEASURE TO WORK WITH. THE FACILITY WAS CLEAN, TIDY,
12:24PM 8 COMFORTABLE AND ALL AROUND PEACEFUL.

12:24PM 9 "HMMM. COULD GET GET ANY BETTER? YES. MY INSURANCE HAS
12:25PM 10 NOT CONTRACTED WITH THERANOS ONLY LABCORP. ONE OF THE PLEASANT
12:25PM 11 INDIVIDUALS I SPOKE WITH AT THERANOS OFFERED TO CALCULATE THE
12:25PM 12 COST FOR ALL THESE TEES I WAS HAVING DONE. I FIGURED WHAT DO I
12:25PM 13 HAVE TO LOSE? SHE CAME BACK WITH \$34.80. I WAS ABSOLUTELY
12:25PM 14 FLOORED AND SAID IS THAT ALL? I CHOSE TO TREAT MYSELF AND SAY
12:25PM 15 THE HELL WITH MY INSURANCE. NOW MIND YOU THESE IDENTICAL LAB
12:25PM 16 COST MY INSURANCE \$876.92 THE LAST TIME I WENT IN IN
12:25PM 17 FEBRUARY 2014."

12:25PM 18 AND THEN JUST TO FINISH IT UP. IF YOU GO TO THE NEXT
12:25PM 19 PAGE, IT SAYS, "PLEASE PASS THIS ON TO AS MANY PEOPLE AS YOU
12:25PM 20 KNOW."

12:25PM 21 AND THEN SHE GOES ON, RIGHT?

12:25PM 22 NOW, AGAIN, MR. LUCAS, THIS, AS YOU UNDERSTOOD IT, WAS
12:25PM 23 PART OF THE MISSION OF THERANOS; RIGHT?

12:26PM 24 A. YEAH.

12:26PM 25 Q. TO PROVIDE PEOPLE WITH THAT LEVEL OF CARE TO MAKE THINGS

12:26PM 1 EASIER FOR THEM; RIGHT?

12:26PM 2 A. YES.

12:26PM 3 Q. AND MS. HOLMES HAD TOLD YOU ABOUT THAT, THAT VISION GOING
12:26PM 4 ALL OF THE WAY BACK TO 2005?

12:26PM 5 A. CORRECT.

12:26PM 6 Q. AND YOU WERE EXCITED ABOUT THAT; RIGHT?

12:26PM 7 A. YES.

12:26PM 8 Q. AND THAT WAS -- A PATIENT LIKE THIS IS BASICALLY
12:26PM 9 CONFIRMATION OF THAT VISION STARTING TO BECOME A REALITY?

12:26PM 10 A. YES.

12:26PM 11 Q. OKAY. YOU CAN PUT THAT ASIDE, MR. LUCAS.

12:26PM 12 ON DIRECT EXAMINATION YOU WERE SHOWN A PARTICULAR
12:26PM 13 DOCUMENT, AND THAT IS EXHIBIT 7366. AND THAT WOULD BE IN THE
12:26PM 14 GOVERNMENT'S BINDER, OR YOU CAN LOOK AT IT ON THE SCREEN.

12:27PM 15 OKAY. DO YOU HAVE THAT IN FRONT OF YOU?

12:27PM 16 A. YES.

12:27PM 17 Q. AND YOU SEE THERE'S AN EMAIL -- IT'S AFTER THE COVER PAGE.
12:27PM 18 I GUESS IT'S PAGE 2.

12:27PM 19 IT'S AN EMAIL FROM MS. QUINTANA TO HERSELF AND THEN IT
12:27PM 20 COPIES YOU AND YASMIN IBARRA.

12:27PM 21 DO YOU SEE THAT?

12:27PM 22 A. YES.

12:27PM 23 Q. OKAY. AND THIS IS AN EMAIL THAT YOU CAUSED TO BE SENT TO
12:28PM 24 BDT INVESTORS; RIGHT?

12:28PM 25 A. YES.

12:28PM 1 Q. AND SO THESE WERE INVESTORS IN YOUR COMPANY?

12:28PM 2 A. CORRECT.

12:28PM 3 Q. OKAY. SO IN ORDER FOR YOU TO RAISE THE MONEY TO INVEST IN
12:28PM 4 A TRANSACTION LIKE THE ONE WITH THERANOS, YOU WOULD OFTENTIMES
12:28PM 5 HAVE INVESTORS UNDERLYING THAT WHO WOULD PUT IN MONEY; RIGHT?

12:28PM 6 A. NOT OFTEN. ALWAYS.

12:28PM 7 Q. ALWAYS.

12:28PM 8 A. I MEAN, THAT'S HOW IT WORKED.

12:28PM 9 WE WOULD HAVE OUR GROUP OF INVESTORS, WE WOULD GO TO THEM,
12:28PM 10 THEY WOULD DECIDE WHETHER THEY WANTED TO INVEST OR NOT, AND
12:28PM 11 THIS WAS JUST A STANDARD WAY WE DID IT.

12:28PM 12 Q. RIGHT.

12:28PM 13 SO THESE PEOPLE, LIKE THESE INVESTORS IN BDT, THEY WOULD
12:28PM 14 BASICALLY BE INDIRECT INVESTORS IN THERANOS; RIGHT?

12:28PM 15 A. YES. WE WERE THE DIRECT -- OUR BDT ENTITY WAS THE DIRECT
12:28PM 16 INVESTOR, AND THEY ALL HAD CONTRIBUTED CAPITAL TO OUR
12:29PM 17 BLACK DIAMOND ENTITY.

12:29PM 18 Q. RIGHT.

12:29PM 19 AND THEY, IN TYPICAL FASHION, DON'T HAVE THESE OTHER
12:29PM 20 INVESTORS IN YOUR COMPANY, THEY DON'T HAVE DIRECT INTERACTION
12:29PM 21 OR COMMUNICATION WITH THE COMPANY LIKE THERANOS?

12:29PM 22 A. THEY WOULD IF WE HAD SOMEONE ON THE PHONE OR A CONFERENCE,
12:29PM 23 THEN THEY COULD ASK QUESTIONS INDIRECTLY AND TALK.

12:29PM 24 BUT IN THE NORMAL COURSE OF BUSINESS, NO.

12:29PM 25 Q. AND IN THE CASE OF THERANOS, THEY DIDN'T HAVE ANY

12:29PM 1 COMMUNICATION, AS YOU UNDERSTAND IT, WITH THERANOS?

12:29PM 2 A. A FEW DID.

12:29PM 3 Q. A FEW DID? OKAY.

12:29PM 4 A. YES.

12:29PM 5 Q. BUT NOT ALL OF THEM?

12:29PM 6 A. CORRECT.

12:29PM 7 Q. OKAY. SO FOR THE PEOPLE WHO AT LEAST DIDN'T HAVE ANY

12:29PM 8 COMMUNICATION WITH THERANOS, THEY WOULD HAVE TO RELY ON WHAT

12:29PM 9 YOU WERE TELLING THEM IN DISCLOSING, OR NOT DISCLOSING TO THEM,

12:29PM 10 IN ORDER TO MAKE A DECISION ABOUT WHAT TO DO; RIGHT?

12:29PM 11 A. YES.

12:30PM 12 Q. OKAY. AND BECAUSE OF THAT FACT, YOU WANTED TO SEND THEM A

12:30PM 13 LETTER TO MAKE IT CLEAR THAT YOU WERE LACKING SOME INFORMATION

12:30PM 14 HERE THAT YOU MIGHT NORMALLY HAVE?

12:30PM 15 A. YES.

12:30PM 16 Q. SO THAT IT WAS CLEAR FOR ALL CONCERNED THAT THIS WAS NOT A

12:30PM 17 TYPICAL SITUATION WHERE YOU HAD ACCESS TO A LOT MORE

12:30PM 18 INFORMATION ABOUT THE COMPANY?

12:30PM 19 A. YES.

12:30PM 20 Q. OKAY. AND, IN FACT, IF YOU GO TO THIS PAGE, IT SAYS IN

12:30PM 21 THE SECOND SENTENCE AFTER THE GREETING, IT SAYS, "PER OUR

12:30PM 22 COUNSEL'S RECOMMENDATION, WE WOULD LIKE TO SHARE ADDITIONAL

12:30PM 23 INFORMATION."

12:30PM 24 DO YOU SEE THAT?

12:30PM 25 A. YES.

12:30PM 1 Q. AND SO YOU WERE ACTUALLY DOING THIS BECAUSE YOU HAD A
12:30PM 2 LAWYER WHO WAS TELLING YOU THIS IS A GOOD IDEA; RIGHT?

12:30PM 3 A. CORRECT.

12:30PM 4 Q. AND THEN IF YOU GO TO A COUPLE OF PAGES AFTER THAT,
12:30PM 5 THERE'S THE ACTUAL LETTER TO BLACK DIAMOND INVESTORS; RIGHT?

12:30PM 6 A. YES.

12:30PM 7 Q. OKAY. LET'S GO TO THE MIDDLE PARAGRAPH OR THE THIRD
12:31PM 8 PARAGRAPH.

12:31PM 9 THERE'S A SENTENCE THAT READS, "ALL TERMS OF THESE
12:31PM 10 TRANSACTIONS WERE UNANIMOUSLY APPROVED BY A SPECIAL COMMITTEE,
12:31PM 11 CONSISTING ONLY OF DIRECTORS WHO ARE INDEPENDENT OF THE FOUNDER
12:31PM 12 OPERATING ON THE ADVICE OF LEADING COUNSEL FROM THE TOP LAW
12:31PM 13 FIRMS IN THE COUNTRY."

12:31PM 14 DO YOU SEE THAT?

12:31PM 15 A. YES.

12:31PM 16 Q. AND THAT'S REFERRING TO THE TRANSACTIONS THAT WOULD CLOSE
12:31PM 17 BY DECEMBER 31ST, INCLUDING A 5 TO 1 FORWARD STOCK SPLIT?

12:31PM 18 A. YES.

12:31PM 19 Q. OKAY. SO YOU WERE CONVEYING TO YOUR INVESTORS THAT THE
12:31PM 20 TRANSACTIONS AT ISSUE WERE APPROVED BY A SPECIAL COMMITTEE;
12:31PM 21 RIGHT?

12:31PM 22 A. YES.

12:31PM 23 Q. AND THAT'S A SPECIAL COMMITTEE OF THERANOS'S BOARD OF
12:32PM 24 DIRECTORS?

12:32PM 25 A. YES.

12:32PM 1 Q. RIGHT.

12:32PM 2 AND YOU COMMUNICATED TO YOUR INVESTORS THAT THAT SPECIAL
12:32PM 3 COMMITTEE WAS OPERATING INDEPENDENTLY OF THE FOUNDER OF
12:32PM 4 THERANOS?

12:32PM 5 A. YES.

12:32PM 6 Q. AND THAT FOUNDER WAS MS. ELIZABETH HOLMES; RIGHT?

12:32PM 7 A. CORRECT.

12:32PM 8 Q. OKAY. IF YOU GO TO THE NEXT PAGE. AT THE VERY TOP THERE
12:32PM 9 IT SAYS, "YOU SHOULD NOT CONSTRUE THE CONTENTS OF THIS LETTER
12:32PM 10 AND ATTACHED EXHIBIT A AS LEGAL OR INVESTMENT ADVICE, BUT
12:32PM 11 RATHER, YOU SHOULD CONSULT WITH YOUR OWN ATTORNEY AND PERSONAL
12:32PM 12 BUSINESS AND TAX ADVISERS TO ARRIVE AT YOUR OWN EVALUATION OF
12:32PM 13 THE INVESTMENT."

12:32PM 14 RIGHT?

12:32PM 15 A. YES.

12:32PM 16 Q. YOU WANTED TO MAKE SURE YOUR PEOPLE WHO WERE INVESTORS
12:32PM 17 COULD MAKE THEIR OWN DECISIONS AND NOT JUST SAY, WELL, BECAUSE
12:32PM 18 CHRIS LUCAS LIKES THIS DEAL, I THINK I'LL DO IT, TOO; RIGHT?

12:32PM 19 A. CORRECT.

12:32PM 20 Q. IF WE GO TO THE NEXT PAGE, YOU SEE THERE'S A VOTING RIGHTS
12:33PM 21 SECTION.

12:33PM 22 A. YES.

12:33PM 23 Q. AND THEN IT TALKS ABOUT "THE MANAGEMENT OF THERANOS,
12:33PM 24 THERANOS'S BOARD OF DIRECTORS AND AN INDEPENDENT COMMITTEE OF
12:33PM 25 THERANOS'S BOARD RECOMMENDED THAT IN CONJUNCTION WITH THE

12:33PM 1 SERIES C-1 FINANCING, THERANOS AMEND AND RESTATE ITS GOVERNING
12:33PM 2 DOCUMENTS TO CREATE A DUAL-CLASS STRUCTURE OF CLASS A AND
12:33PM 3 CLASS B COMMON STOCK."

12:33PM 4 DO YOU SEE THAT?

12:33PM 5 A. YES.

12:33PM 6 Q. AND DO YOU UNDERSTAND THAT IT'S TALKING ABOUT THIS BECAUSE
12:33PM 7 THE COMMON STOCK WOULD BASICALLY BE THE VOTING CONTROL OF THE
12:33PM 8 COMPANY; RIGHT?

12:33PM 9 A. NO. TYPICALLY WHEN IT'S A DUAL-CLASS STOCK, IT'S GIVING
12:33PM 10 ME FOUNDER CONTROL OF THE COMPANY AND NOT THE INVESTORS.

12:33PM 11 Q. RIGHT.

12:33PM 12 AND, IN FACT, IT SAYS THAT IN THE NEXT SENTENCE; RIGHT?

12:33PM 13 IT SAYS, "THE PURPOSE OF THIS DUAL-CLASS STRUCTURE IS TO
12:33PM 14 PROVIDE THE FOUNDER AND CHIEF EXECUTIVE OFFICER OF THERANOS,
12:34PM 15 ELIZABETH HOLMES (THE FOUNDER)," AND IT GOES ON, "WITH 100-TO-1
12:34PM 16 VOTING RIGHTS AS THE SOLE HOLDER OF CLASS B COMMON STOCK."

12:34PM 17 RIGHT?

12:34PM 18 A. YES.

12:34PM 19 Q. AND WHAT THIS SAYS, IS THAT THE THERANOS BOARD OF
12:34PM 20 DIRECTORS, INCLUDING AN INDEPENDENT COMMITTEE, DECIDED TO GIVE
12:34PM 21 ELIZABETH HOLMES VOTING CONTROL OF THERANOS; RIGHT?

12:34PM 22 A. IT DID.

12:34PM 23 Q. RIGHT.

12:34PM 24 NOT SUNNY BALWANI?

12:34PM 25 A. CORRECT.

12:34PM 1 Q. AND YOU KNEW THAT BEFORE YOUR INVESTMENT; RIGHT?

12:34PM 2 A. CORRECT.

12:34PM 3 Q. AND YOU KNEW THAT SHE HAD VOTING CONTROL, SO THE DIRECTION

12:34PM 4 OF THE COMPANY WOULD BE ENTIRELY UP TO HER?

12:34PM 5 A. CORRECT.

12:34PM 6 Q. LET'S GO TO A COUPLE OF MORE PAGES AFTER THAT.

12:34PM 7 THERE'S A SECTION CALLED REPRESENTATIONS, WARRANTIES,

12:35PM 8 DELIVERABLES AND COVENANTS GIVEN TO SERIES C-1 INVESTORS.

12:35PM 9 DO YOU SEE THAT?

12:35PM 10 A. YES.

12:35PM 11 Q. AND THIS SAYS, "THE SERIES C-1 PREFERRED STOCK PURCHASE

12:35PM 12 AGREEMENT (THE PURCHASE AGREEMENT) LACKS REPRESENTATIONS,

12:35PM 13 WARRANTIES, AND DELIVERABLES STANDARD FOR AN INVESTMENT OF THIS

12:35PM 14 TYPE."

12:35PM 15 DO YOU SEE THAT, MR. LUCAS?

12:35PM 16 A. YES.

12:35PM 17 Q. AND THEN IT GOES ON AND SAYS, "THE PURCHASE AGREEMENT DOES

12:35PM 18 NOT PROVIDE MANY OF THE STANDARD REPRESENTATIONS, WARRANTIES

12:35PM 19 AND DELIVERABLES WE WOULD EXPECT TO SEE IN AN INVESTMENT OF

12:35PM 20 THIS NATURE AND THOSE THAT HAVE BEEN PROVIDED ARE SERIOUSLY

12:35PM 21 CURTAILED. SPECIFICALLY, THE PURCHASE AGREEMENT DOES NOT

12:35PM 22 PROVIDE THE FOLLOWING."

12:35PM 23 AND THEN IT HAS SOME THINGS THAT IT DOESN'T PROVIDE;

12:35PM 24 RIGHT?

12:35PM 25 SO YOU'RE TELLING YOUR INVESTORS HERE THAT THERE'S LIMITED

12:35PM 1 INFORMATION ABOUT THERANOS AVAILABLE; RIGHT?

12:35PM 2 A. YES.

12:35PM 3 Q. AND YOU'RE TELLING THEM THAT YOU SHOULD KNOW THAT BEFORE

12:36PM 4 YOU CAN MAKE A DECISION TO INVEST THROUGH

12:36PM 5 BLACK DIAMOND VENTURES?

12:36PM 6 A. THAT'S RIGHT.

12:36PM 7 Q. AND YOU WERE AWARE OF THAT, TOO, IN TERMS OF ANY FUNDS

12:36PM 8 THAT YOU PUT INTO THE DEAL; RIGHT?

12:36PM 9 A. YES.

12:36PM 10 Q. RIGHT.

12:36PM 11 AND IF YOU GO TO ONE MORE SECTION JUST AFTER THAT, THIS IS

12:36PM 12 IN THE SECTION ABOUT WHAT THINGS WERE NOT AVAILABLE, AND THIS

12:36PM 13 SAYS IN PARAGRAPH IV -- WELL, LET'S LOOK AT PARAGRAPH III

12:36PM 14 FIRST.

12:36PM 15 IT SAYS, "COMPLIANCE CERTIFICATE OF AN OFFICER OF

12:36PM 16 THERANOS, CERTIFYING TO THE TRUTH AND CORRECTNESS OF THERANOS'S

12:36PM 17 REPRESENTATIONS AND WARRANTIES IN THE PURCHASE AGREEMENT."

12:36PM 18 RIGHT?

12:36PM 19 A. YES.

12:36PM 20 Q. SO NORMALLY YOU WOULD HAVE THAT TYPE OF COMPLIANCE

12:36PM 21 CERTIFICATE?

12:36PM 22 A. NOT NECESSARILY, BUT IN THIS CASE THAT'S CERTAINLY WHAT

12:36PM 23 OUR LAWYER SAID.

12:36PM 24 Q. OKAY. AND IF YOU GO TO THE NEXT SECTION, IV, THIS IS

12:37PM 25 AMONG THE THINGS THAT ARE NOT AVAILABLE, "REPRESENTATIONS AND

12:37PM 1 WARRANTIES REGARDING ITS SUBSIDIARY (OR LACK THEREOF),

12:37PM 2 FINANCIAL STATEMENTS."

12:37PM 3 DO YOU SEE THAT?

12:37PM 4 A. YES.

12:37PM 5 Q. AND SO YOU HAD NO FINANCIAL STATEMENTS?

12:37PM 6 A. CORRECT.

12:37PM 7 Q. AND THEN ANOTHER THING IN THERE IS "ABSENCE OF MATERIALLY

12:37PM 8 ADVERSE CHANGES."

12:37PM 9 RIGHT?

12:37PM 10 A. CORRECT.

12:37PM 11 Q. RIGHT. YOU DIDN'T HAVE THAT?

12:37PM 12 AND THEN IF YOU GO ON, THERE'S A SECTION OR A PHRASE

12:37PM 13 "MATERIAL CONTRACTS."

12:37PM 14 RIGHT?

12:37PM 15 A. YES.

12:37PM 16 Q. AND THAT'S ANOTHER THING THAT YOU DIDN'T HAVE?

12:37PM 17 A. YES.

12:37PM 18 Q. AND, IN FACT, THE CONTRACT OR THE AMENDMENT TO THE

12:37PM 19 CONTRACT BETWEEN WALGREENS AND THERANOS THAT I'VE SHOWED YOU

12:37PM 20 EARLIER IN YOUR TESTIMONY, THAT'S, AS YOU SAID, NOT SOMETHING

12:37PM 21 THAT YOU HAD BEFORE YOU MADE THIS INVESTMENT DECISION; RIGHT?

12:37PM 22 A. THAT'S RIGHT.

12:37PM 23 Q. BUT THAT'S THE KIND OF THING THAT YOU MIGHT WANT TO SEE IN

12:37PM 24 OTHER TYPES OF DEALS; RIGHT?

12:37PM 25 A. YES, AND NOT ALWAYS.

12:38PM 1 AGAIN, YOU GO BACK TO TRUST OF THE PEOPLE THAT YOU'RE
12:38PM 2 DOING BUSINESS WITH. YOU DON'T OBVIOUSLY NECESSARILY LOOK AT
12:38PM 3 ALL OF THE CONTRACTS.
12:38PM 4 Q. WELL, I THINK YOU SAID YOU MIGHT HAVE SOMETHING CALLED,
12:38PM 5 LIKE, A DATA ROOM? IS THAT A PHRASE THAT YOU USED?
12:38PM 6 A. YES.
12:38PM 7 Q. OKAY. AND YOU MIGHT HAVE DOCUMENTS TO LOOK AT?
12:38PM 8 A. AND THAT -- YES.
12:38PM 9 Q. AND YOU MIGHT NOT BE ABLE TO PERSONALLY LOOK AT
12:38PM 10 EVERYTHING; RIGHT?
12:38PM 11 A. RIGHT.
12:38PM 12 Q. YOU WOULD HAVE YOUR STAFF --
12:38PM 13 A. YES.
12:38PM 14 Q. -- LOOK AT IT; RIGHT?
12:38PM 15 OKAY. BUT WHEN YOU ARE IN A SITUATION -- WELL, LET ME ASK
12:38PM 16 YOU THIS FIRST. THIS TYPE OF LETTER THAT YOU JUST SAID AND WE
12:38PM 17 JUST LOOKED AT AND YOU LOOKED AT WITH MR. BOSTIC, YOU NEVER DID
12:38PM 18 THAT IN ANY OTHER INVESTMENT THAT YOU EVER MADE; RIGHT?
12:38PM 19 A. THAT'S CORRECT.
12:38PM 20 Q. LIKE, ALL OF THAT TIME THAT YOU FOUNDED YOUR COMPANY IN
12:38PM 21 THE LATE 1990S?
12:38PM 22 A. THAT'S CORRECT.
12:38PM 23 Q. OKAY. SO THIS WAS VERY UNUSUAL?
12:38PM 24 A. IT WAS.
12:39PM 25 AND IF I MAY EXPAND A LITTLE BIT? YOU HAVE, IN THERANOS,

12:39PM 1 PROBABLY THE MOST PRESTIGIOUS BOARD OF A PRIVATE COMPANY AT THE
12:39PM 2 TIME.

12:39PM 3 YOU KNOW, YOU CERTAINLY RELY ON THE FOLKS THAT ARE
12:39PM 4 OPERATING THE COMPANY THAT ARE ON THE BOARD OF THE COMPANY, AND
12:39PM 5 THAT GIVES YOU, IN ABSENCE OF SOME OF THIS MATERIAL, IT GIVES
12:39PM 6 YOU A LOT OF CONFIDENCE IN WHAT IS HAPPENING WITH THE COMPANY.

12:39PM 7 Q. RIGHT.

12:39PM 8 AND IN ADDITION, YOU KNEW THAT WALGREENS WAS PARTNERING
12:39PM 9 WITH THERANOS; RIGHT?

12:39PM 10 A. THANK YOU. THAT PROBABLY WAS THE EXCLAMATION POINT, THAT
12:39PM 11 THEY HAD A DEAL WITH WALGREENS, WERE ROLLING OUT, AND NOW WE'RE
12:39PM 12 GOING TO HAVE SOME REAL REVENUE.

12:39PM 13 Q. RIGHT. THANK YOU, MR. LUCAS.

12:39PM 14 BUT THE REASON WHY YOU SENT THIS LETTER TO YOUR INVESTORS,
12:39PM 15 IS THAT YOU WANTED TO MAKE SURE THAT THEY UNDERSTOOD THAT THERE
12:40PM 16 WAS SOME ADDITIONAL RISKS ASSOCIATED WITH THIS BECAUSE OF THE
12:40PM 17 LACK OF SOME OF THIS INFORMATION?

12:40PM 18 A. YES. WHAT WE WROTE HERE IS ACCURATE.

12:40PM 19 Q. RIGHT. BECAUSE YOU WANTED YOUR INVESTORS TO UNDERSTAND
12:40PM 20 THAT THERE WAS SOME ADDITIONAL RISKS ASSOCIATED WITH THIS DEAL;
12:40PM 21 RIGHT?

12:40PM 22 A. YES.

12:40PM 23 Q. OKAY. AND THE REASON WHY YOU WOULD BE WILLING, OR YOUR
12:40PM 24 INVESTORS WHO DECIDED TO PARTICIPATE, WERE COMFORTABLE WITH
12:40PM 25 THAT IS BECAUSE IF THERANOS HAD SUCCESSFULLY ROLLED OUT ITS

12:40PM 1 STORES, INVESTORS IN THERANOS STOOD TO MAKE A LOT OF MONEY;
12:40PM 2 RIGHTS?

12:40PM 3 A. HOPE SO, YEAH.

12:40PM 4 Q. THAT WAS THE WHOLE POINT; RIGHT? RIGHT?

12:40PM 5 A. YES.

12:40PM 6 Q. AND IN THE WORLD OF VENTURE CAPITAL, THAT'S WHAT YOU'RE
12:40PM 7 GOING FOR, RIGHT, IS TO BASICALLY HIT A HOME RUN; RIGHT?

12:40PM 8 A. YES.

12:40PM 9 Q. AND THAT SOMETIMES IN THE VENTURE CAPITAL WORLD,
12:40PM 10 ESPECIALLY IN THIS PART OF THE COUNTRY, YOU CALL THOSE
12:40PM 11 UNICORNS; RIGHT?

12:40PM 12 A. THAT WORD WAS NOT USED BACK THEN. BUT, YES, TODAY, SURE.

12:41PM 13 Q. BUT YOU UNDERSTAND WHAT THAT MEANS TODAY; RIGHT?

12:41PM 14 A. SURE.

12:41PM 15 Q. AND THAT'S WHAT YOU'RE HOPING FOR, IS THAT YOU'RE GOING TO
12:41PM 16 BE INVESTING IN SOMETHING THAT TURNS OUT TO BE A UNICORN;
12:41PM 17 RIGHT?

12:41PM 18 A. YES. AND ONE WOULD THINK AT THE TIME, GIVEN THE ROLLOUT
12:41PM 19 OF WALGREENS, THAT WOULD HAVE BEEN THE BEGINNING.

12:41PM 20 Q. BUT YOU KNOW FROM YOUR LONG EXPERIENCE, MR. LUCAS, THAT
12:41PM 21 THAT PROSPECT OF HIGH REWARD DOESN'T COME WITHOUT TAKING
12:41PM 22 SIGNIFICANT RISK; RIGHT?

12:41PM 23 A. CERTAINLY BACK WHEN WE INVEST IN 2006, THAT'S CORRECT.

12:41PM 24 IF YOU'RE INVESTING IN A ROLLOUT WITH A FIRM LIKE
12:41PM 25 WALGREENS, YOU'RE GETTING MORE ASSURANCE AND CERTAINTY THAT

12:41PM 1 WE'RE GOING TO HAVE A SUCCESSFUL INVESTMENT.

12:41PM 2 Q. RIGHT.

12:41PM 3 THAT'S REASSURING THAT YOU HAVE SOMETHING LIKE WALGREENS

12:41PM 4 ASSOCIATED WITH THIS; RIGHT?

12:42PM 5 A. SURE.

12:42PM 6 Q. RIGHT.

12:42PM 7 BUT NONETHELESS, THIS WASN'T YOUR FIRST RODEO; RIGHT? DO

12:42PM 8 YOU KNOW THAT EXPRESSION?

12:42PM 9 A. YES.

12:42PM 10 Q. OKAY.

12:42PM 11 A. THAT'S RIGHT. BUT THIS IS GETTING LATER STAGE IN A

12:42PM 12 COMPANY, WHERE YOU'RE GETTING MORE CONFIDENT THAT YOU'RE GOING

12:42PM 13 TO BE SUCCESSFUL BECAUSE OF THIS.

12:42PM 14 Q. RIGHT.

12:42PM 15 BUT YOU WOULD AGREE WITH ME AS A GENERAL PROPOSITION, THAT

12:42PM 16 TREMENDOUS REWARD DOESN'T COME WITHOUT ALSO TAKING SIGNIFICANT

12:42PM 17 RISK?

12:42PM 18 A. GENERALLY THAT'S RIGHT.

12:42PM 19 Q. AND ONE RISK WE DISCUSSED DURING THE COURSE OF OUR

12:42PM 20 CONVERSATION TODAY IS THE EXECUTION RISK; RIGHT?

12:42PM 21 A. THAT'S TRUE.

12:42PM 22 Q. MEANING THE ABILITY TO ACTUALLY EXECUTE ON ROLLING OUT ALL

12:42PM 23 OF THESE WALGREENS STORES?

12:42PM 24 A. YES.

12:42PM 25 Q. OKAY. LET'S GO SPECIFICALLY TO THE DOCUMENTS THAT WENT

12:42PM 1 ALONG WITH YOUR INVESTMENT.

12:42PM 2 IF YOU COULD TAKE A LOOK AT EXHIBIT 3530.

12:43PM 3 I THINK THAT MIGHT ALREADY BE IN EVIDENCE. MAYBE NOT. I

12:43PM 4 DON'T KNOW THAT IT'S IN EVIDENCE, SO LET'S LOOK AT THIS

12:43PM 5 TOGETHER, MR. LUCAS.

12:43PM 6 THE COURT: LET ME -- AS TO THIS EXHIBIT, PAGES 1

12:43PM 7 THROUGH 24 AND 32 WERE ADMITTED ON APRIL 29TH.

12:43PM 8 ON MAY 11, PAGE 42 WAS DISPLAYED, BUT THAT SHOULD BE

12:43PM 9 ADMITTED NOW IN RETROSPECT. IT WAS NOT ADMITTED WHEN IT WAS

12:43PM 10 DISPLAYED.

12:43PM 11 BY THE PARTIES ARE MOVING FOR 42 TO BE ADMITTED I THINK.

12:43PM 12 MR. BOSTIC, WAS THAT YOURS?

12:43PM 13 MR. BOSTIC: NO OBJECTION, YOUR HONOR. I BELIEVE

12:43PM 14 PAGE 29 MIGHT BE IN THE SAME CATEGORY.

12:44PM 15 THE COURT: RIGHT, 29 AND 42.

12:44PM 16 THOSE WILL BE ADMITTED.

12:44PM 17 ANY OBJECTION TO THAT?

12:44PM 18 MR. COOPERSMITH: NO, YOUR HONOR.

12:44PM 19 THE COURT: THOSE PAGES ARE ADMITTED.

12:44PM 20 SO THAT'S THE UNIVERSE OF THE EXHIBIT THAT WAS ADMITTED,

12:44PM 21 AND IF YOUR QUESTION FALLS WITHIN THAT.

12:44PM 22 IF NOT, THEN YOU'LL HAVE TO MOVE TO THE ADMISSION OF ANY

12:44PM 23 OTHER PAGE.

12:44PM 24 (GOVERNMENT'S EXHIBIT 3530, PAGES 29 AND 42, WERE RECEIVED

12:44PM 25 IN EVIDENCE.)

12:44PM 1 MR. COOPERSMITH: THANK YOU, YOUR HONOR. LET ME SEE
12:44PM 2 IF I CAN TAKE CARE OF THAT RIGHT NOW.
12:44PM 3 BECAUSE THERE IS, IN ADDITION TO PAGE 29, AND YOUR HONOR
12:44PM 4 SAID 42, THERE IS ANOTHER PAGE I WOULD LIKE TO ADMIT, WHICH IS
12:44PM 5 PAGE 25.
12:44PM 6 LET ME ASK, WITH YOUR HONOR'S PERMISSION, TO ESTABLISH
12:44PM 7 WHAT THAT IS.
12:44PM 8 THE COURT: ALL RIGHT.
12:44PM 9 BY MR. COOPERSMITH:
12:44PM 10 Q. MR. LUCAS, DO YOU SEE PAGE 25 OF THE EXHIBIT THAT IS ON
12:44PM 11 YOUR SCREEN? IT'S NOT ADMITTED INTO EVIDENCE YET.
12:45PM 12 THE COURT: CAN YOU BLOW THAT UP A LITTLE BIT,
12:45PM 13 PLEASE.
12:45PM 14 (PAUSE IN PROCEEDINGS.)
12:45PM 15 BY MR. COOPERSMITH:
12:45PM 16 Q. DO YOU SEE -- ARE YOU ABLE TO SEE PAGE 25?
12:45PM 17 A. YES.
12:45PM 18 Q. THANK YOU. IS THAT YOUR SIGNATURE ON THIS STOCK PURCHASE
12:45PM 19 AGREEMENT?
12:45PM 20 A. YES.
12:45PM 21 Q. AND IS IT DATED DECEMBER 31ST, 2013?
12:45PM 22 A. CORRECT.
12:45PM 23 MR. COOPERSMITH: YOUR HONOR, WE MOVE TO ADMIT
12:45PM 24 PAGE 25 AS WELL.
12:45PM 25 MR. BOSTIC: NO OBJECTION.

12:45PM 1 THE COURT: IT'S ADMITTED. PAGE 25 IS ADMITTED, AND
12:45PM 2 IT MAY BE PUBLISHED.
12:45PM 3 (GOVERNMENT'S EXHIBIT 3530, PAGE 25 WAS RECEIVED IN
12:45PM 4 EVIDENCE.)
12:45PM 5 BY MR. COOPERSMITH:
12:45PM 6 Q. THANK YOU.
12:45PM 7 MR. ALLEN, CAN YOU GO TO THE FIRST PAGE OF THE EXHIBIT,
12:45PM 8 PAGE 1.
12:45PM 9 AND TO GET ORIENTED HERE, IT SAYS AMENDED AND RESTATED
12:45PM 10 SERIES C-1 PREFERRED STOCK PURCHASE AGREEMENT.
12:46PM 11 DO YOU SEE THAT?
12:46PM 12 A. YES.
12:46PM 13 Q. AND IT SAYS THERE'S A CLOSING DATE, AND THE INITIAL
12:46PM 14 CLOSING DATE IS JULY 1, 2010; RIGHT?
12:46PM 15 A. YES.
12:46PM 16 Q. BUT YOU SIGNED THE DOCUMENT ON DECEMBER 31ST, 2013; IS
12:46PM 17 THAT RIGHT?
12:46PM 18 A. YEAH, IT LOOKS SO.
12:46PM 19 Q. RIGHT.
12:46PM 20 AND YOU UNDERSTOOD THAT YOU WERE INVESTING AT THE END OF
12:46PM 21 DECEMBER 2013 IN THE VERY LAST OF WHAT WAS CALLED THE C-1
12:46PM 22 FINANCING ROUND?
12:46PM 23 A. THANK YOU FOR REFRESHING MY MEMORY.
12:46PM 24 Q. AND DOES THAT HELP YOU?
12:46PM 25 A. THAT APPEARS TO BE THE CASE, YEAH.

12:46PM 1 Q. OKAY. THANKS.

12:46PM 2 LET'S GO TO PAGE 11 OF THE EXHIBIT. DO YOU SEE THERE'S A
12:46PM 3 SECTION CALLED REPRESENTATIONS AND WARRANTIES OF INVESTORS?

12:46PM 4 A. YES.

12:46PM 5 Q. OKAY. NOW, WE TALKED A FEW MOMENTS AGO ABOUT HOW, WHEN
12:47PM 6 YOU INVEST IN A COMPANY LIKE THERANOS, SOME, OR MAYBE IN SOME
12:47PM 7 CASES ALL, OF THE MONEY COMES FROM INVESTORS WHO INVEST THROUGH
12:47PM 8 BLACK DIAMOND VENTURES; RIGHT?

12:47PM 9 A. YES, IN OUR CASE, YES.

12:47PM 10 Q. RIGHT.

12:47PM 11 AND THAT YOU HAVE AGREEMENTS WITH YOUR OWN INVESTORS TO
12:47PM 12 DOCUMENT THEIR INVESTMENTS IN BLACK DIAMOND VENTURES AND ALL OF
12:47PM 13 THE TERMS AND CONDITIONS OF THOSE?

12:47PM 14 A. YES.

12:47PM 15 Q. RIGHT?

12:47PM 16 AND YOU YOURSELF, IN THOSE DOCUMENTS, YOU AND YOUR TEAM,
12:47PM 17 YOU HAVE PEOPLE SIGN -- INVESTORS IN YOUR COMPANY SIGN
12:47PM 18 REPRESENTATIONS AND WARRANTIES; CORRECT?

12:47PM 19 A. YES.

12:47PM 20 Q. AND SOMETIMES THEY HAVE TO REPRESENT THINGS LIKE THEY
12:47PM 21 UNDERSTAND THE INVESTMENT IS SPECULATIVE AND THINGS OF THAT
12:47PM 22 NATURE; RIGHT?

12:47PM 23 A. CORRECT.

12:47PM 24 Q. AND YOU INSIST ON HAVING THEM SIGN THAT BEFORE THEY'RE
12:47PM 25 ALLOWED TO INVEST; RIGHT?

12:47PM 1 A. YES.

12:47PM 2 Q. AND YOU EXPECT THOSE PEOPLE TO TAKE THAT SERIOUSLY; RIGHT?

12:47PM 3 A. YES.

12:47PM 4 Q. AND IF THEY DON'T BELIEVE WHAT THEY'RE SIGNING IS CORRECT,

12:47PM 5 YOU WOULD EXPECT THEM NOT TO SIGN; RIGHT?

12:48PM 6 A. CORRECT.

12:48PM 7 Q. AND THE PEOPLE WHO INVEST THROUGH YOUR COMPANY -- JUST

12:48PM 8 DESCRIBE THE GENERAL NATURE OF THOSE TYPES OF INVESTORS. WHAT

12:48PM 9 KIND OF PEOPLE ARE THEY?

12:48PM 10 A. I THINK WHAT YOU'RE -- WELL, SPECIFICALLY THEY NEED TO BE

12:48PM 11 ACCREDITED INVESTORS, WHICH MEANS THAT THEY HAVE A NET WORTH

12:48PM 12 THAT WOULD ALLOW THEM TO TAKE A LOSS IN THE INVESTMENT AND IT

12:48PM 13 NOT MATERIALLY OR SIGNIFICANTLY IMPACT THEM.

12:48PM 14 Q. OKAY. AND SOMETIMES THOSE INVESTORS EVEN HAVE LEGAL

12:48PM 15 COUNSEL LOOKING AT THE DOCUMENTS BEFORE THEY SIGN THEM; RIGHT?

12:48PM 16 A. YES.

12:48PM 17 Q. OKAY. AND SOMETIMES YOU HAVE LEGAL COUNSEL LOOK AT

12:48PM 18 DOCUMENTS BEFORE YOU SIGN ON TO INVESTMENTS THAT YOUR COMPANY

12:48PM 19 MAKES; RIGHT?

12:48PM 20 A. YES.

12:48PM 21 Q. OKAY. AND YOU EXPECT THAT -- WELL, LET'S JUST GO TO SOME

12:48PM 22 OF THESE PROVISIONS.

12:48PM 23 SO WE'RE LOOKING AT SECTION 4. AND THE FIRST ONE IS 4.2

12:49PM 24 THAT I WANT TO TALK TO YOU ABOUT. THAT'S CALLED INVESTMENT

12:49PM 25 INTENT; RIGHT?

12:49PM 1 AND YOU SEE IN THAT PARAGRAPH IT SAYS, AMONG OTHER THINGS,
12:49PM 2 "SUCH INVESTOR HAS NO PRESENT INTENTION OF SELLING, GRANTING
12:49PM 3 ANY PARTICIPATION IN, OR OTHERWISE DISTRIBUTING THE SAME."

12:49PM 4 DO YOU SEE THAT?

12:49PM 5 A. YES.

12:49PM 6 Q. AND WHEN YOU, ON BEHALF OF BLACK DIAMOND VENTURES, SIGN AN
12:49PM 7 AGREEMENT LIKE THIS, YOU'RE BEING SINCERE WHEN YOU REPRESENT
12:49PM 8 SOMETHING LIKE THAT; CORRECT?

12:49PM 9 A. YES.

12:49PM 10 Q. RIGHT.

12:49PM 11 AND SO IF YOU HAD INVESTMENT -- IF YOU HAD AN INTENT TO
12:49PM 12 IMMEDIATELY TURN AROUND AND SELL YOUR SHARES SOMEHOW, YOU
12:49PM 13 WOULDN'T SIGN THAT; RIGHT?

12:49PM 14 A. YEAH, THAT'S THE CASE. AND THERE ARE OTHER PROVISIONS
12:49PM 15 THAT IF SOMETHING LIKE THAT WERE TO HAPPEN, THEY WOULD HAVE TO
12:49PM 16 BE OFFERED BACK TO THE COMPANY.

12:49PM 17 Q. OKAY. AND THEN THERE'S A NEXT SECTION THAT IS 4.3, AND IT
12:50PM 18 SAYS INVESTMENT EXPERIENCE.

12:50PM 19 AND THIS IS A PARAGRAPH, YOU UNDERSTAND, WHERE YOU AS AN
12:50PM 20 INVESTOR ARE REPRESENTING YOU HAVE SUBSTANTIAL EXPERIENCE IN
12:50PM 21 EVALUATING AND INVESTING IN PRIVATE PLACEMENT TRANSACTIONS.

12:50PM 22 DO YOU SEE THAT?

12:50PM 23 A. YES.

12:50PM 24 Q. AND IT ALSO GOES ON TO SAY THAT YOU'RE CAPABLE OF
12:50PM 25 EVALUATING THE MERITS AND RISKS OF THE INVESTMENT; RIGHT?

12:50PM 1 A. YES.

12:50PM 2 Q. AND THEN THE NEXT SECTION, 4.4, SAYS SPECULATIVE NATURE OF

12:50PM 3 THE INVESTMENT?

12:50PM 4 A. YES.

12:50PM 5 Q. AND IT SAYS, "SUCH INVESTOR UNDERSTANDS AND ACKNOWLEDGES

12:50PM 6 THAT THE COMPANY HAS A LIMITED FINANCIAL AND OPERATING HISTORY

12:50PM 7 AND THAT AN INVESTMENT IN THE COMPANY IS HIGHLY SPECULATIVE AND

12:50PM 8 INVOLVES SUBSTANTIAL RISKS."

12:50PM 9 RIGHT?

12:50PM 10 A. YES.

12:50PM 11 Q. AND IT GOES ON TO SAY, "SUCH INVESTOR CAN BEAR THE

12:50PM 12 ECONOMIC RISK OF SUCH INVESTOR'S INVESTMENT AND IS ABLE,

12:51PM 13 WITHOUT IMPAIRING SUCH INVESTOR'S FINANCIAL CONDITION, TO HOLD

12:51PM 14 THE SHARES AND THE CONVERSION SHARES FOR AN INDEFINITE PERIOD

12:51PM 15 OF TIME AND TO SUFFER A COMPLETE LOSS OF SUCH INVESTOR'S

12:51PM 16 INVESTMENT."

12:51PM 17 RIGHT?

12:51PM 18 A. YES.

12:51PM 19 Q. AND WHEN YOU SIGNED THIS AGREEMENT, YOU KNOW THAT'S WHAT

12:51PM 20 YOU'RE REPRESENTING; RIGHT?

12:51PM 21 A. CORRECT.

12:51PM 22 Q. AND THAT IS A TRUE STATEMENT, OTHERWISE YOU WOULDN'T SIGN

12:51PM 23 IT; RIGHT?

12:51PM 24 A. CORRECT.

12:51PM 25 Q. AND THEN ACCESS TO DATA. IT SAYS, "SUCH INVESTOR HAS HAD

12:51PM 1 AN OPPORTUNITY TO ASK QUESTIONS OF AND RECEIVE ANSWERS FROM,
12:51PM 2 THE OFFICERS OF THE COMPANY" --

12:51PM 3 THE COURT: MR. COOPERSMITH, IF YOU COULD SLOW DOWN
12:51PM 4 WHEN YOU READ.

12:51PM 5 MR. COOPERSMITH: YES, YOUR HONOR. OF COURSE.

12:51PM 6

12:51PM 7 Q. ANYWAY, I WON'T READ THIS AGAIN. BUT YOU SEE WHAT IT SAYS
12:51PM 8 ON THE PAGE; RIGHT?

12:51PM 9 A. YES.

12:51PM 10 Q. AND THIS IS ANOTHER PROVISION THAT YOU SIGNED WHEN YOU
12:51PM 11 INVEST -- WHEN YOU INVESTED IN THERANOS?

12:51PM 12 A. CORRECT.

12:51PM 13 Q. AND THEN IF YOU GO A LITTLE BIT FURTHER INTO THAT
12:51PM 14 PARAGRAPH, THAT SAME ONE, IT SAYS THAT "SUCH INVESTOR
12:51PM 15 ACKNOWLEDGES THAT ANY BUSINESS PLANS PREPARED BY THE COMPANY
12:51PM 16 HAVE BEEN, AND CONTINUE TO BE, SUBJECT TO CHANGE AND THAT ANY
12:52PM 17 PROJECTIONS INCLUDED IN SUCH BUSINESS PLANS OR OTHERWISE ARE
12:52PM 18 NECESSARILY SPECULATIVE IN NATURE, AND IT CAN BE EXPECTED THAT
12:52PM 19 SOME OR ALL OF THE ASSUMPTIONS UNDERLYING THE PROJECTIONS WILL
12:52PM 20 NOT MATERIALIZE OR WILL VARY SIGNIFICANTLY FROM ACTUAL
12:52PM 21 RESULTS."

12:52PM 22 DO YOU SEE THAT?

12:52PM 23 A. YES.

12:52PM 24 Q. AND I THINK WE TALKED ABOUT THIS CONCEPT EARLIER, BUT DO
12:52PM 25 YOU UNDERSTAND THAT MANAGEMENT OF THE COMPANY, DEPENDING ON THE

12:52PM 1 CIRCUMSTANCES AT HAND, MAY HAVE TO PIVOT AND MAKE DIFFERENT
12:52PM 2 DECISIONS THAN WHAT THEY STARTED OUT THINKING THAT THEY WOULD
12:52PM 3 DO?
12:52PM 4 IS THAT FAIR?
12:52PM 5 A. FAIR.
12:52PM 6 Q. AND THIS IS ANOTHER THING THAT YOU AGREED TO WHEN YOU MAKE
12:52PM 7 AN INVESTMENT; RIGHT?
12:52PM 8 A. YES.
12:52PM 9 Q. AND YOU'RE SINCERE WHEN YOU SIGN THAT; RIGHT?
12:52PM 10 A. YES.
12:52PM 11 Q. OKAY. AND THEN YOU -- THE NEXT ONE IS 4.6, THE CONCEPT OF
12:52PM 12 ACCREDITED INVESTOR.
12:52PM 13 WE ALREADY TALKED ABOUT THAT CONCEPT; RIGHT?
12:52PM 14 A. YES.
12:52PM 15 Q. AND THEN 4.9, THIS SAYS NO PUBLIC MARKET.
12:53PM 16 DO YOU SEE THAT?
12:53PM 17 A. YES.
12:53PM 18 Q. AND THIS JUST MEANS THAT YOU KNOW THAT THE COMPANY IS NOT
12:53PM 19 A PUBLIC COMPANY; RIGHT?
12:53PM 20 A. CORRECT.
12:53PM 21 Q. AND SO YOU CAN'T DECIDE TO SELL YOUR SHARES ON THE STOCK
12:53PM 22 MARKET LIKE THE NEW YORK STOCK EXCHANGE?
12:53PM 23 A. THAT'S CORRECT.
12:53PM 24 Q. OR THE NASDAQ MARKET, OR SOME OTHER STOCK EXCHANGE; RIGHT?
12:53PM 25 A. RIGHT.

12:53PM 1 Q. ALL RIGHT. SO THAT MEANS THAT IT'S GOING TO BE A LOT
12:53PM 2 TOUGHER TO SELL YOUR SHARES COMPARED TO INVESTING IN A PUBLIC
12:53PM 3 COMPANY; RIGHT?

12:53PM 4 A. YES.

12:53PM 5 Q. OKAY. AND YOU UNDERSTAND THAT WHEN YOU'RE INVESTING?

12:53PM 6 A. I DO.

12:53PM 7 Q. SO YOU MIGHT BE IN FOR THE LONG HAUL?

12:53PM 8 A. LONG HAUL.

12:53PM 9 Q. RIGHT.

12:53PM 10 AND THEN IF YOU GO TO PAGE 7 -- I'M SORRY, PAGE 21 OF THE
12:53PM 11 EXHIBIT. THERE'S A PARTICULAR SECTION THAT IS 7.8.

12:53PM 12 AND THIS SAYS THAT, "THIS AGREEMENT," REFERRING TO THE
12:53PM 13 STOCK PURCHASE AGREEMENT, "INCLUDING THE EXHIBITS ATTACHED
12:53PM 14 HERETO, CONSTITUTE THE FULL AND ENTIRE UNDERSTANDING AND
12:54PM 15 AGREEMENT AMONG THE PARTIES WITH REGARD TO THE SUBJECTS HEREOF
12:54PM 16 AND SUPERSEDE ANY PRIOR AGREEMENTS OR UNDERSTANDINGS WITH
12:54PM 17 RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING, WITHOUT
12:54PM 18 LIMITATION, THE PRIOR AGREEMENT, WHICH IS SUPERSEDED HEREBY AND
12:54PM 19 OF NO FURTHER FORCE OR EFFECT."

12:54PM 20 DO YOU SEE THAT?

12:54PM 21 A. YES.

12:54PM 22 Q. OKAY. SO THIS IS ANOTHER THING THAT YOU'RE AGREEING TO
12:54PM 23 WHEN YOU MAKE THE INVESTMENT; RIGHT?

12:54PM 24 A. YES, THAT'S RIGHT.

12:54PM 25 Q. AND WHEN YOU MADE THE THERANOS INVESTMENT?

12:54PM 1

A. YES.

12:54PM 2

Q. AND WHAT IT'S SAYING IS ANY OTHER UNDERSTANDINGS OR

12:54PM 3

AGREEMENTS THAT YOU THINK MIGHT EXIST ARE NOT THE CASE, AND, IN

12:54PM 4

FACT, THE AGREEMENT THAT YOU'RE SIGNING IS THE SOLE AGREEMENT

12:54PM 5

BETWEEN YOU AND THE COMPANY; CORRECT?

12:54PM 6

A. YES.

12:54PM 7

Q. OKAY. I HAVE ONE MORE EXHIBIT TO SHOW YOU, MR. LUCAS.

12:55PM 8

THAT'S EXHIBIT 12604. THIS IS NOT IN EVIDENCE YET, BUT IF YOU

12:55PM 9

COULD LOOK AT IT ON YOUR SCREEN OR YOU CAN FIND IT IN THE

12:55PM 10

BINDER AS YOU PREFER.

12:55PM 11

EXHIBIT 12604.

12:55PM 12

MR. ALLEN, MR. LUCAS WOULD RATHER SEE IT ON THE SCREEN.

12:55PM 13

ARE YOU ABLE TO PUT THAT UP JUST FOR MR. LUCAS?

12:55PM 14

OKAY. THIS IS AN EMAIL FROM YOU TO JAMES L, WITH A COPY

12:55PM 15

TO ANA QUINTANA, ON APRIL 17TH, 2014; IS THAT CORRECT?

12:56PM 16

A. YES.

12:56PM 17

Q. AND IT RELATES TO SOME DEVELOPMENTS AT THERANOS?

12:56PM 18

A. YES.

12:56PM 19

MR. COOPERSMITH: YOUR HONOR, WE OFFER

12:56PM 20

EXHIBIT 12604.

12:56PM 21

MR. BOSTIC: NO OBJECTION.

12:56PM 22

THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:56PM 23

(DEFENDANT'S EXHIBIT 12604 WAS RECEIVED IN EVIDENCE.)

12:56PM 24

BY MR. COOPERSMITH:

12:56PM 25

Q. OKAY. SO, MR. LUCAS, WE TALKED ABOUT EARLIER THE BOARD OF

12:56PM 1 DIRECTORS AT THERANOS AND YOUR VIEW OF THE BOARD; RIGHT?

12:56PM 2 AND HERE'S A PRESS RELEASE ANNOUNCING THAT

12:56PM 3 WILLIAM H. FRIST, M.D., IS JOINING THE BOARD OF DIRECTORS.

12:56PM 4 DO YOU SEE THAT?

12:56PM 5 A. YES.

12:56PM 6 THE COURT: EXCUSE ME. WE NEED THE MONITORS ON IN

12:56PM 7 THE JURY BOX.

12:56PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

12:56PM 9 CAN WE PUBLISH THE EXHIBIT, YOUR HONOR?

12:56PM 10 THE COURT: YES.

12:56PM 11 MR. COOPERSMITH: THANK YOU.

12:56PM 12 Q. OKAY. SO NOW WE CAN ALL SEE IT, MR. LUCAS.

12:56PM 13 AND YOU SEE IT'S AN ANNOUNCEMENT THAT WILLIAM H. FRIST,

12:56PM 14 M.D., IS JOINING THE THERANOS BOARD OF DIRECTORS?

12:57PM 15 A. YES.

12:57PM 16 Q. AND YOU KNOW WHO THAT IS; RIGHT?

12:57PM 17 A. YES.

12:57PM 18 Q. AND DR. FRIST WAS A U.S. SENATOR?

12:57PM 19 A. CORRECT.

12:57PM 20 Q. AND AS IT SAYS HERE, "ALSO A NATIONALLY RECOGNIZED HEART

12:57PM 21 AND LUNG TRANSPLANT SURGEON"?

12:57PM 22 A. YES.

12:57PM 23 Q. AND IT GOES ON, AND I WON'T READ IT ALL, BUT IT EXPLAINS

12:57PM 24 WHAT HIS BIO WAS; RIGHT?

12:57PM 25 A. CORRECT.

12:57PM 1 Q. AND YOU VIEWED THIS AS A VERY POSITIVE DEVELOPMENT; RIGHT?

12:57PM 2 A. YES.

12:57PM 3 Q. BECAUSE DR. FRIST WAS NOT ONLY SOMEONE WHO HAD BEEN IN A

12:57PM 4 POSITION OF LEADERSHIP IN THE U.S. SENATE, BUT HE ALSO WAS A

12:57PM 5 MEDICAL DOCTOR; RIGHT?

12:57PM 6 A. YES.

12:57PM 7 Q. AND YOU EXPECT DR. FRIST TO HAVE PARTICULAR KNOWLEDGE OF

12:57PM 8 HEALTH CARE SUCH AS WHAT THERANOS WAS ENGAGED IN; CORRECT?

12:57PM 9 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION.

12:57PM 10 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

12:57PM 11 THE WITNESS: CERTAINLY ONE WOULD THINK THAT HE

12:57PM 12 WOULD HAVE MORE KNOWLEDGE THAN SOMEONE WHO IS NOT A PHYSICIAN.

12:57PM 13 BY MR. COOPERSMITH:

12:57PM 14 Q. RIGHT.

12:57PM 15 SO THIS, AGAIN, YOU VIEWED AS A POSITIVE; RIGHT?

12:58PM 16 A. YES, ABSOLUTELY.

12:58PM 17 Q. AND AT THE TOP YOU WROTE "AGREED" WITH AN EXCLAMATION

12:58PM 18 POINT THAT IT WAS A GREAT APPOINTMENT; RIGHT?

12:58PM 19 A. YES.

12:58PM 20 Q. THANK YOU, MR. LUCAS.

12:58PM 21 I HAVE NO FURTHER QUESTIONS FOR YOU AT THIS TIME.

12:58PM 22 THE COURT: REDIRECT?

12:58PM 23 MR. BOSTIC: YES, YOUR HONOR, BRIEFLY.

12:58PM 24 MR. COOPERSMITH: I'M SORRY, YOUR HONOR. I'M TOLD

12:58PM 25 MY TEAM COULD USE A FEW MINUTES OF A BREAK. IS THAT POSSIBLE

12:58PM 1 FOR --

12:58PM 2 THE COURT: WELL, I'M JUST INQUIRING OF OUR SCHEDULE
12:58PM 3 HERE.

12:58PM 4 MR. BOSTIC, YOU'LL HAVE A FEW MINUTES OF REDIRECT AND THEN
12:58PM 5 I ANTICIPATE SOME RECROSS AFTER THAT?

12:58PM 6 LET'S -- WHY DON'T WE TAKE OUR -- LET'S TAKE OUR AFTERNOON
12:58PM 7 BREAK NOW, LADIES AND GENTLEMEN. LET'S TAKE ABOUT 30 MINUTES.
12:58PM 8 WE'LL TAKE A BREAK. WE'LL COME BACK IN ABOUT 30 MINUTES.

12:58PM 9 THE WITNESS: OKAY.

12:58PM 10 MR. COOPERSMITH: YOUR HONOR, THANK YOU.

12:58PM 11 (RECESS FROM 12:58 P.M. UNTIL 1:36 P.M.)

01:36PM 12 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

01:36PM 13 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

01:36PM 14 MR. BOSTIC, DID YOU HAVE REDIRECT?

01:36PM 15 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

01:36PM 16 **REDIRECT EXAMINATION**

01:36PM 17 BY MR. BOSTIC:

01:37PM 18 Q. GOOD AFTERNOON, MR. LUCAS.

01:37PM 19 I'D LIKE TO ASK YOU JUST A FEW TOPICS ON CROSS-EXAMINE.

01:37PM 20 A. SURE.

01:37PM 21 Q. FIRST, MR. COOPERSMITH ASKED YOU SOME QUESTIONS ABOUT SOME
01:37PM 22 WORK YOU DID WITH THERANOS ON A FINANCIAL MODEL.

01:37PM 23 DO YOU RECALL THOSE QUESTIONS?

01:37PM 24 A. YES.

01:37PM 25 Q. DO YOU RECALL THE APPROXIMATE TIMEFRAME WHEN YOU WERE

01:37PM 1 DOING THAT WORK WITH THE COMPANY?

01:37PM 2 A. MAYBE 2007, 2008. SOMETHING LIKE THAT.

01:37PM 3 Q. DO YOU RECALL IT BEING -- THAT IT WAS CLOSER TO YOUR FIRST
01:37PM 4 INVESTMENT AND SECOND INVESTMENT THAN THE 2013 INVESTMENT?

01:37PM 5 A. CORRECT.

01:37PM 6 Q. WAS THAT WORK ON THE FINANCIAL MODEL WITH THERANOS
01:37PM 7 COMPLETE SOME TIME BEFORE THE 2013 INVESTMENT TO YOUR
01:38PM 8 RECOLLECTION?

01:38PM 9 A. YES.

01:38PM 10 Q. IF THERANOS PROVIDED FINANCIAL PROJECTIONS TO INVESTORS IN
01:38PM 11 2014, WOULD YOU HAVE HAD ANY INVOLVEMENT WITH PREPARING THOSE
01:38PM 12 PROJECTIONS?

01:38PM 13 A. NO.

01:38PM 14 Q. WHEN YOU DID THAT WORK WITH THERANOS, CAN YOU DESCRIBE
01:38PM 15 WHAT YOUR CONTRIBUTION WAS, IF YOU REMEMBER?

01:38PM 16 A. I WAS WORKING, AND I'M FORGETTING HER LAST NAME, BUT WITH
01:38PM 17 RASHITA, WHO IS THE CONTROLLER, I BELIEVE, AND I WAS HELPING
01:38PM 18 HER PUT TOGETHER -- WE WERE TAKING THE PROJECTIONS FROM THOSE
01:38PM 19 WHO WERE MAKING THEM AND PUTTING THEM INTO A FORMAT THAT WAS
01:38PM 20 READABLE BASICALLY.

01:38PM 21 Q. AND WHEN YOU SAY "TAKING THE PROJECTIONS FROM THOSE THAT
01:39PM 22 WERE MAKING THEM," DID YOU HAVE AN UNDERSTANDING ABOUT WHO WAS
01:39PM 23 ACTUALLY MAKING THE PROJECTIONS THEMSELVES?

01:39PM 24 A. CERTAINLY ELIZABETH WOULD HAVE BEEN PART OF THAT, AND
01:39PM 25 OTHERS AT THE COMPANY, BUT I DON'T KNOW WHO ELSE.

01:39PM 1 Q. LET ME ASK THAT A SLIGHTLY DIFFERENT WAY.

01:39PM 2 AS PART OF YOUR ROLE IN CONNECTION WITH THE FINANCIAL

01:39PM 3 MODEL, DID YOU HAVE ANYTHING TO DO WITH GENERATING THE

01:39PM 4 PROJECTIONS OR MAKING ASSUMPTIONS ABOUT WHAT WOULD HAPPEN WITH

01:39PM 5 THE BUSINESS OR THE TECHNOLOGY?

01:39PM 6 A. NO.

01:39PM 7 Q. BETWEEN YOU AND THE PEOPLE WHO WERE WORKING AT THERANOS,

01:39PM 8 WHO HAD MORE INFORMATION ABOUT WHAT THE COMPANY WAS DOING AND

01:39PM 9 WHAT THE TECHNOLOGY WAS CAPABLE OF DURING THAT TIME PERIOD?

01:39PM 10 A. WHO OTHER THAN -- I GUESS I'M NOT --

01:39PM 11 Q. I'M ASKING -- SURE. LET ME ASK THAT A BETTER WAY.

01:39PM 12 LET ME ASK, FINANCIAL PROJECTIONS SOMETIMES RELY ON

01:40PM 13 ASSUMPTIONS ABOUT WHAT IS GOING TO HAPPEN WITH A BUSINESS AND

01:40PM 14 ITS TECHNOLOGY; IS THAT RIGHT?

01:40PM 15 A. YES.

01:40PM 16 Q. WHEN YOU WERE WORKING ON THE FINANCIAL MODEL BACK IN THAT

01:40PM 17 APPROXIMATELY 2007 TIME PERIOD, DID YOU HAVE MORE OR LESS

01:40PM 18 INFORMATION THAN THE PEOPLE WHO ARE ACTUALLY WORKING AT

01:40PM 19 THERANOS ABOUT WHAT THE COMPANY WAS DOING AND WHAT THOSE

01:40PM 20 ASSUMPTIONS REASONABLY MIGHT BE?

01:40PM 21 A. YEAH, CERTAINLY LESS.

01:40PM 22 Q. OKAY. DO YOU RECALL -- DO YOU STILL HAVE THE BLACK BINDER

01:40PM 23 IN FRONT OF YOU?

01:40PM 24 A. YES.

01:40PM 25 Q. COULD I ASK YOU TO TURN BACK TO TAB 12022 IN THAT BINDER?

01:40PM 1 A. SAY THE NUMBER AGAIN.

01:40PM 2 Q. SURE. IT'S 12022, IN THE BLACK BINDER.

01:41PM 3 A. OH, I'M SORRY. THE BLACK BINDER.

01:41PM 4 Q. FROM THE DEFENSE.

01:41PM 5 A. YES.

01:41PM 6 Q. AND IN 12022, DO YOU RECALL THAT THIS WAS AN EMAIL THAT

01:41PM 7 MS. HOLMES SENT YOU IN DECEMBER OF 2005 AND IT ATTACHED A SLIDE

01:41PM 8 PRESENTATION?

01:41PM 9 A. 12022?

01:41PM 10 Q. UH-HUH.

01:41PM 11 A. MAYBE IT WAS ADMITTED ON THE SCREEN. IT IS BLANK.

01:41PM 12 MR. BOSTIC: YOUR HONOR, MAY I GIVE HIM MY COPY?

01:41PM 13 MAY I APPROACH, YOUR HONOR?

01:41PM 14 THE COURT: YES.

01:41PM 15 MR. BOSTIC: (HANDING.)

01:41PM 16 Q. DO YOU NOW HAVE A COPY OF DEFENSE EXHIBIT 12022?

01:42PM 17 A. OH, YES. THIS WAS SOMEWHERE IN HERE.

01:42PM 18 Q. THAT'S ALL RIGHT. WE CAN USE THE COPY THAT YOU HAVE

01:42PM 19 THERE.

01:42PM 20 DO YOU SEE THAT IT IS AN EMAIL FROM DECEMBER 2005 FROM

01:42PM 21 MS. HOLMES TO YOU?

01:42PM 22 A. YES.

01:42PM 23 Q. AND IT ATTACHES A SLIDE PRESENTATION. AND YOU REVIEWED

01:42PM 24 ONE OF THOSE SLIDES WITH MR. COOPERSMITH; IS THAT RIGHT?

01:42PM 25 A. YES.

01:42PM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT WOULD LIKE
01:42PM 2 TO ADMIT PAGES 1 THROUGH 5 AND 26, WHICH IS THE SLIDE THAT
01:42PM 3 MR. COOPERSMITH REVIEWED WITH THE WITNESS.

01:42PM 4 MR. COOPERSMITH: YOUR HONOR, CAN I JUST INQUIRE
01:42PM 5 BECAUSE I MAY HAVE DIFFERENT PAGE NUMBERS.

01:42PM 6 IS THE PAGE NUMBER MR. BOSTIC IDENTIFIED AS PAGE 26 THE
01:42PM 7 SAME AS BATES NUMBER 806?

01:42PM 8 MR. BOSTIC: I DON'T HAVE IT IN FRONT OF ME, BUT I
01:42PM 9 CAN SEE THAT MR. COOPERSMITH HAS IT OPENED TO THE CORRECT PAGE.

01:42PM 10 IT'S SLIDE NUMBER 22. IT'S THE 26TH PAGE IN THE EXHIBIT.

01:43PM 11 THE COURT: SLIDE NUMBER, I'M SORRY, 22?

01:43PM 12 MR. BOSTIC: THE SLIDE IS NUMBERED 22 IN THE LOWER
01:43PM 13 RIGHT, I THINK.

01:43PM 14 THE COURT: YES. IT'S 806. YES.

01:43PM 15 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

01:43PM 16 WE HAVE NO OBJECTION TO THAT SLIDE THAT I REVIEWED WITH
01:43PM 17 MR. LUCAS.

01:43PM 18 THE COURT: OKAY.

01:43PM 19 MR. COOPERSMITH: I DO HAVE AN OBJECTION TO THE REST
01:43PM 20 OF IT, AND I'LL NOTE SINCE THE EXHIBIT IS NOT IN EVIDENCE,
01:43PM 21 UNDER RULE 612, THE GOVERNMENT WOULD ONLY BE ENTITLED TO ADMIT
01:43PM 22 THE PAGE THAT HE REVIEWED WITH MR. LUCAS.

01:43PM 23 SO NO OBJECTION TO BATES NUMBER 806, BUT OBJECTION TO THE
01:43PM 24 REST OF IT UNDER 401 AND 802.

01:43PM 25 THE COURT: WHAT WAS THE OTHER PAGE?

01:43PM 1 MR. BOSTIC: PAGES 1 THROUGH 5 I'M SEEKING TO ADMIT,
01:43PM 2 YOUR HONOR. THAT'S THE EMAIL ATTACHING IT AS WELL AS THE FIRST
01:43PM 3 PAGE OF THE PRESENTATION, JUST TO ORIENT THE JURY TO WHAT WE'RE
01:43PM 4 LOOKING AT.

01:43PM 5 THE COURT: DO YOU HAVE OBJECTION TO THOSE PAGES?

01:43PM 6 MR. COOPERSMITH: JUST TO MAKE SURE I HAVE THE RIGHT
01:43PM 7 PAGES, YOUR HONOR.

01:43PM 8 THE COURT: SO WE ARE TALKING ABOUT 781, 782, AND
01:44PM 9 783, AND 785, I BELIEVE.

01:44PM 10 MR. COOPERSMITH: NO, YOUR HONOR. NOW THAT I'VE
01:44PM 11 SEEN THOSE, I DON'T HAVE AN OBJECTION TO THOSE.

01:44PM 12 THE COURT: I HOPE I GOT THOSE NUMBERS RIGHT. WE'LL
01:44PM 13 SEE. I WILL ADMIT THOSE, AND WE'LL SEE WHAT HAPPENS.

01:44PM 14 (LAUGHTER.)

01:44PM 15 MR. COOPERSMITH: WE'LL HOPE FOR THE BEST.

01:44PM 16 THE COURT: YES. THEY'RE ADMITTED, AND THEY MAY BE
01:44PM 17 PUBLISHED.

01:44PM 18 MR. BOSTIC: THANK YOU, YOUR HONOR.

01:44PM 19 (DEFENDANT'S EXHIBIT 12022, PAGES 1-5 AND 26, WAS RECEIVED
01:44PM 20 IN EVIDENCE.)

01:44PM 21 MR. BOSTIC: THANK YOU, YOUR HONOR.

01:44PM 22 Q. SO, MR. LUCAS ON THE SCREEN IN FRONT OF YOU. DO YOU SEE
01:44PM 23 THE EMAIL THAT MS. HOLMES SENT YOU IN DECEMBER OF 2005?

01:44PM 24 A. YES.

01:44PM 25 Q. AND YOU SEE THERE ARE A NUMBER OF ATTACHMENTS, BUT LET'S

01:44PM 1 LOOK AT PAGE 5 OF THIS EXHIBIT WHICH SHOULD BE ON THE SCREEN
01:44PM 2 NOW.

01:44PM 3 AND DO YOU SEE HERE, THE FIRST PAGE OF THE SLIDE SHOW THAT
01:44PM 4 YOU WERE SENT, THAT SAYS, "THERANOS REDEFINING HEALTH CARE,"
01:45PM 5 AND IT'S DATED DECEMBER 22ND, 2005?

01:45PM 6 A. YES.

01:45PM 7 Q. LET'S NOW GO TO PAGE 26 OF THE EXHIBIT.

01:45PM 8 AND DO YOU RECALL REVIEWING THIS PAGE WITH MR. COOPERSMITH
01:45PM 9 DURING YOUR CROSS-EXAMINATION?

01:45PM 10 A. YES.

01:45PM 11 Q. THIS PAGE OF THE SLIDE PRESENTATION SHOWS SOME PROJECTED
01:45PM 12 GENERATIONS OF THE THERANOS ANALYZER; IS THAT RIGHT?

01:45PM 13 A. CORRECT.

01:45PM 14 Q. I JUST WANT TO NOTE A FEW THINGS HERE WITH YOU.

01:45PM 15 FIRST OF ALL, YOU NOTED THAT THE TIMELINE HERE ONLY GOES
01:45PM 16 UNTIL 2010; IS THAT RIGHT?

01:45PM 17 A. YES.

01:45PM 18 Q. AND SO WHEN YOU WERE MAKING YOUR DECISION ABOUT WHETHER TO
01:45PM 19 INVEST IN 2013, YOU ALREADY WOULD HAVE BEEN BEYOND THE PERIOD
01:45PM 20 OF TIME COVERED BY THIS PROJECTION FROM 2005; IS THAT RIGHT?

01:45PM 21 A. CORRECT.

01:45PM 22 Q. LOOKING AT WHAT THOSE DIFFERENT GENERATIONS WERE PROJECTED
01:46PM 23 TO BE ABLE TO DO, I WANT TO DRAW YOUR ATTENTION TO THE THERANOS
01:46PM 24 3.0 LINE.

01:46PM 25 DO YOU SEE THERE THAT IT INDICATES THAT THE 3.0 GENERATION

01:46PM 1 WOULD HAVE THE ABILITY TO DO TEN ASSAYS?

01:46PM 2 A. YES.

01:46PM 3 Q. AND DO YOU SEE THAT THE 4.0 GENERATION WAS PROJECTED TO
01:46PM 4 HAVE THE ABILITY TO DO 100 ASSAYS?

01:46PM 5 A. YES.

01:46PM 6 Q. WHEN YOU WERE INVESTING IN 2013, WHAT WAS YOUR
01:46PM 7 UNDERSTANDING ABOUT HOW MANY TESTS THE ANALYZER COULD DO BASED
01:46PM 8 ON YOUR CONVERSATIONS WITH MS. HOLMES?

01:46PM 9 A. AS I SAID EARLIER, IT WAS DOZENS THAT I BELIEVED. AND I
01:46PM 10 WOULD NOT HAVE REMEMBERED THIS SLIDE BACK THEN.

01:46PM 11 Q. FAIR TO SAY THAT THIS PROJECTION BACK IN 2005 WAS NOT IN
01:46PM 12 YOUR MIND IN 2013?

01:46PM 13 MR. COOPERSMITH: OBJECTION. LEADING.

01:46PM 14 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

01:47PM 15 THE WITNESS: CORRECT. THIS WAS NOT IN MY MIND.

01:47PM 16 BY MR. BOSTIC:

01:47PM 17 Q. DURING ANY OF YOUR CONVERSATIONS WITH MS. HOLMES BEFORE
01:47PM 18 YOU INVENTED -- EXCUSE ME.

01:47PM 19 DURING ANY OF YOUR CONVERSATIONS WITH MS. HOLMES BEFORE
01:47PM 20 YOU INVESTED IN 2013, DID SHE EVER TELL YOU THAT THERANOS WAS
01:47PM 21 STILL USING ITS 3.0 SERIES DEVICE IN ITS CLINICAL LAB FOR
01:47PM 22 PATIENT TESTING?

01:47PM 23 A. I DON'T RECALL.

01:47PM 24 Q. DID MS. HOLMES EVER TELL YOU THAT THE VERSION OF THE
01:47PM 25 ANALYZER THAT WAS BEING USED FOR PATIENT TESTING WAS ONLY BEING

01:47PM 1 USED FOR NO MORE THAN A DOZEN TESTS?

01:47PM 2 A. NO.

01:47PM 3 Q. DID MS. HOLMES EVER TELL YOU THAT THE 4.0 GENERATION OF

01:47PM 4 THE ANALYZER, WHICH ACCORDING TO THIS CHART WOULD BE ABLE TO DO

01:47PM 5 100 ASSAYS, WAS NEVER DEVELOPED TO THE POINT THAT IT WAS

01:47PM 6 ACTUALLY USED FOR PATIENT CLINICAL TESTING AT THERANOS?

01:48PM 7 WOULD YOU LIKE THAT QUESTION AGAIN?

01:48PM 8 A. NO. JUST LOOKING. I WAS GETTING READY FOR AN OBJECTION.

01:48PM 9 (LAUGHTER.)

01:48PM 10 THE WITNESS: THERE. SEE.

01:48PM 11 MR. COOPERSMITH: I JUST LIKE TO THROW PEOPLE OFF.

01:48PM 12 (LAUGHTER.)

01:48PM 13 THE COURT: THIS IS BASKETBALL SEASON AND YOU WENT

01:48PM 14 IN FOR A LAY UP.

01:48PM 15 THE WITNESS: I DID.

01:48PM 16 THE COURT: SO LET'S GET BACK IN THE GAME.

01:48PM 17 THE WITNESS: I'M SORRY. NOW YOU DO HAVE TO REPEAT

01:48PM 18 THE QUESTION.

01:48PM 19 (LAUGHTER.)

01:48PM 20 BY MR. BOSTIC:

01:48PM 21 Q. LET ME ASK IT THE SAME WAY, WHICH IS, BEFORE YOU INVESTED

01:48PM 22 IN -- OR AT ANY TIME DURING YOUR CONVERSATIONS WITH MS. HOLMES,

01:48PM 23 DID SHE TELL YOU THAT THE 4.0 SERIES ANALYZER, WHICH ACCORDING

01:48PM 24 TO THIS WOULD BE ABLE TO DO 100 ASSAYS, WAS NEVER DEVELOPED TO

01:48PM 25 THE POINT THAT IT WAS ACTUALLY USED FOR CLINICAL TESTING BY

01:48PM 1 THERANOS?

01:48PM 2 A. SO I DON'T RECALL THAT AT THAT TIME WE WERE TALKING ABOUT

01:48PM 3 GENERATIONS.

01:49PM 4 SO I COULDN'T TELL YOU WHAT GENERATION WE WERE ON OR NOT.

01:49PM 5 Q. DID SHE EVER TELL YOU GENERALLY THAT THE VERSION OF THE

01:49PM 6 DEVICE THAT COULD DO 100 ASSAYS, OR MORE THAN 12 ASSAYS, HAD

01:49PM 7 NOT BEEN DEVELOPED TO THE POINT THAT IT WAS USED IN THE

01:49PM 8 CLINICAL LABORATORY?

01:49PM 9 A. NO.

01:49PM 10 Q. WOULD THAT HAVE BEEN SURPRISING TO YOU AT THE TIME?

01:49PM 11 A. YES.

01:49PM 12 AS I SAID, I THOUGHT WE COULD DO DOZENS.

01:49PM 13 Q. OKAY. WE CAN PUT THAT ASIDE.

01:49PM 14 YOU WERE ALSO ASKED BY MR. COOPERSMITH ABOUT YOUR RELIANCE

01:49PM 15 ON NEWS STORIES.

01:49PM 16 DO YOU RECALL THAT QUESTION?

01:49PM 17 A. YES.

01:49PM 18 Q. AND HE ASKED YOU SOMETHING TO THE EFFECT OF WHETHER YOU

01:49PM 19 INVEST BASED ON THINGS YOU READ IN THE NEWSPAPER.

01:49PM 20 DO YOU REMEMBER BEING ASKED THAT?

01:49PM 21 A. YES.

01:49PM 22 Q. IN FACT, CAN THE CONTENT OF NEWSPAPER ARTICLES SOMETIMES

01:49PM 23 MAKE A DIFFERENCE FOR YOU IN EVALUATING AN INVESTMENT?

01:50PM 24 A. SURE.

01:50PM 25 Q. AND IN SITUATIONS WHERE THE EXECUTIVES OF A COMPANY SEND

01:50PM 1 YOU A PARTICULAR NEWSPAPER ARTICLE OR REFERENCE IT, AS WE SAW
01:50PM 2 WITH "THE WALL STREET JOURNAL" ARTICLE AND THE
01:50PM 3 "FORTUNE" ARTICLE, DOES THAT HAVE ANY EFFECT ON YOUR
01:50PM 4 WILLINGNESS TO RELY ON THE CONTENT OF THAT ARTICLE?

01:50PM 5 A. IT CAN.

01:50PM 6 Q. WHEN YOU READ "THE WALL STREET JOURNAL" ARTICLE IN
01:50PM 7 SEPTEMBER 2013, WERE YOU AWARE THAT MS. HOLMES AND MR. BALWANI
01:50PM 8 HAD RECEIVED AN ADVANCE COPY OF THAT ARTICLE AND HAD AN
01:50PM 9 OPPORTUNITY TO COMMENT ON IT?

01:50PM 10 MR. COOPERSMITH: OBJECTION. FOUNDATION.

01:50PM 11 THE COURT: WELL, OVERRULED.

01:50PM 12 THE QUESTION ASKED IF HE WAS AWARE.

01:50PM 13 THE WITNESS: NO, I WASN'T AWARE.

01:50PM 14 BY MR. BOSTIC:

01:50PM 15 Q. IF YOU HAD BEEN AWARE OF THAT, WOULD THAT HAVE INCREASED
01:50PM 16 YOUR COMFORT WITH RELYING ON THE CONTENT OF THAT ARTICLE?

01:50PM 17 MR. COOPERSMITH: SAME OBJECTION.

01:51PM 18 THE COURT: OVERRULED.

01:51PM 19 BY MR. BOSTIC:

01:51PM 20 Q. WOULD YOU LIKE THE QUESTION AGAIN?

01:51PM 21 A. YES.

01:51PM 22 Q. IF YOU HAD KNOWN THAT MS. HOLMES AND MR. BALWANI HAD
01:51PM 23 RECEIVED A COPY OF "THE WALL STREET JOURNAL" ARTICLE AND HAD AN
01:51PM 24 OPPORTUNITY TO COMMENT ON IT, WOULD THAT HAVE INCREASED YOUR
01:51PM 25 COMFORT LEVEL WITH RELYING ON THE CONTENT OF THE ARTICLE?

01:51PM 1 A. AND WHEN YOU SAY THEY COULD HAVE COMMENTED ON THAT, YOU
01:51PM 2 MEAN BACK TO THE AUTHOR, THE REPORTER, AND LET THAT BE QUOTED
01:51PM 3 IN THERE?

01:51PM 4 Q. YES, SIR.

01:51PM 5 A. AGAIN, I'M GETTING A LITTLE CONFUSED. BUT IT WOULD HAVE
01:51PM 6 BEEN FINE IF THEY HAD AN ADVANCE COPY AND THEY WERE ABLE TO
01:51PM 7 COMMENT, THAT WOULD BE GREAT.

01:52PM 8 Q. OKAY. YOU WERE ASKED SOME QUESTIONS ABOUT WHAT YOU EXPECT
01:52PM 9 WHEN YOU INVEST IN A COMPANY.

01:52PM 10 AND I THINK YOU WERE SPECIFICALLY ASKED SOMETHING LIKE
01:52PM 11 WHEN YOU INVEST IN A COMPANY, WHETHER YOU EXPECT TO BE INVOLVED
01:52PM 12 IN ALL OF THE BUSINESS DECISIONS MANAGEMENT MAKES.

01:52PM 13 DO YOU REMEMBER BEING ASKED THAT?

01:52PM 14 A. YES.

01:52PM 15 Q. AND I THINK YOUR ANSWER WAS YOU DON'T NECESSARILY EXPECT
01:52PM 16 TO BE INVOLVED IN EVERY BUSINESS DECISION; IS THAT RIGHT?

01:52PM 17 A. CORRECT.

01:52PM 18 Q. WHEN YOU INVEST IN A COMPANY, WHAT DO YOU EXPECT IN TERMS
01:52PM 19 OF GETTING HONEST AND ACCURATE INFORMATION FROM THE EXECUTIVES
01:52PM 20 OF THE COMPANY?

01:52PM 21 A. REGARDLESS OF AMOUNT, I WOULD EXPECT TO HAVE A TRUTHFUL
01:52PM 22 RELATIONSHIP.

01:52PM 23 Q. DURING THAT SAME LINE OF QUESTIONING, MR. COOPERSMITH
01:52PM 24 ASKED YOU ABOUT THE COMPANY'S DECISION TO USE ONE KIND OF
01:52PM 25 ANALYZER VERSUS A DIFFERENT KIND OF ANALYZER.

01:52PM 1 DO YOU REMEMBER THAT?

01:53PM 2 A. YES.

01:53PM 3 Q. AND HE ASKED YOU WHETHER IT WOULD HAVE BOTHERED YOU IF THE
01:53PM 4 COMPANY COULD HAVE DONE -- WELL, LET ME START THAT AGAIN.

01:53PM 5 HE POSED A HYPOTHETICAL INVOLVING A SITUATION WHERE THE
01:53PM 6 COMPANY COULD HAVE DONE MORE KINDS OF TESTS THAN WHAT IT
01:53PM 7 ACTUALLY DID ON THE EDISON ANALYZER.

01:53PM 8 DO YOU REMEMBER THAT DISCUSSION?

01:53PM 9 A. YES.

01:53PM 10 Q. LET ME ASK, DO YOU KNOW WHAT THE CAPABILITIES WERE OF THE
01:53PM 11 EDISON ANALYZER THAT THERANOS WAS USING FOR PATIENT TESTING?

01:53PM 12 A. AGAIN, JUST THAT IT COULD DO DOZENS OF TESTS.

01:53PM 13 Q. DO YOU KNOW WHETHER THAT DEVICE, FOR EXAMPLE, EVEN HAD THE
01:53PM 14 PARTS NECESSARY TO RUN A CBC TEST?

01:53PM 15 A. THAT IS CERTAINLY ONE OF THE COMMON TESTS AND ONE WOULD --
01:53PM 16 I CERTAINLY BELIEVE SO.

01:53PM 17 Q. WOULD YOU WOULD HAVE BEEN SURPRISED BACK THEN TO LEARN
01:54PM 18 THAT THE ANALYZER THAT THERANOS HAD MADE AND WAS USING FOR
01:54PM 19 PATIENT TESTING DIDN'T HAVE THE PARTS TO RUN A CBC TEST?

01:54PM 20 A. YES.

01:54PM 21 Q. AND FINALLY, DO YOU REMEMBER THAT ON CROSS-EXAMINATION YOU
01:54PM 22 WERE SHOWN SOME REPORTS FROM A COUPLE OF THERANOS PATIENTS?

01:54PM 23 A. YES.

01:54PM 24 Q. AND DO YOU RECALL THAT GENERALLY THOSE REPORTS PRAISED THE
01:54PM 25 EXPERIENCE THAT THOSE PATIENTS HAD GETTING THEIR BLOOD DRAWN

01:54PM 1 FROM THERANOS?

01:54PM 2 A. YES.

01:54PM 3 Q. DO YOU RECALL EITHER OF THOSE REPORTS SAYING ANYTHING
01:54PM 4 ABOUT THE ACCURACY OR THE RELIABILITY OF THOSE RESULTS?

01:54PM 5 A. NO.

01:54PM 6 Q. DURING ANY OF YOUR CONVERSATIONS WITH MS. HOLMES, DID SHE
01:54PM 7 INFORM YOU ABOUT ANY ACCURACY PROBLEMS THAT THERANOS WAS HAVING
01:54PM 8 WITH ITS TESTS?

01:54PM 9 A. NO.

01:54PM 10 Q. AS AN INVESTOR, HOW WOULD YOU FEEL ABOUT INVESTING IN A
01:54PM 11 COMPANY WHERE PATIENTS HAD A PLEASANT EXPERIENCE DURING A BLOOD
01:54PM 12 DRAW, BUT THEN LATER RECEIVED RESULTS OF QUESTIONABLE ACCURACY
01:55PM 13 OR RELIABILITY?

01:55PM 14 MR. COOPERSMITH: OBJECTION. CALLS FOR SPECULATION.
01:55PM 15 LACKS FOUNDATION.

01:55PM 16 THE COURT: THIS IS AS -- AGAIN, THIS IS AS TO HIS
01:55PM 17 THOUGHTS AS AN INVESTOR, INVESTING BASED ON HIS EXPERIENCE.

01:55PM 18 MR. BOSTIC: AS TO WHAT WOULD HAVE MATTERED TO HIM,
01:55PM 19 YES.

01:55PM 20 THE COURT: OVERRULED.

01:55PM 21 YOU CAN ANSWER THE QUESTION, SIR.

01:55PM 22 THE WITNESS: OKAY. VERY HAPPY FOR THE GREAT
01:55PM 23 EXPERIENCE THAT THEY MAY HAVE HAD. NOT GOOD IF IT'S NOT
01:55PM 24 ACCURATE, NOT GOOD AT ALL.

01:55PM 25 MR. BOSTIC: NO FURTHER QUESTIONS.

01:55PM 1 THANK YOU.

01:55PM 2 THE COURT: MR. COOPERSMITH.

01:55PM 3 YOU CAN JUST HANG ON TO THAT, AND MR. COOPERSMITH WILL
01:55PM 4 HAVE SOME QUESTIONS FOR YOU.

01:55PM 5 THE WITNESS: OKAY.

01:55PM 6 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:56PM 7 **RECROSS-EXAMINATION**

01:56PM 8 BY MR. COOPERSMITH:

01:56PM 9 Q. JUST A FEW QUESTIONS, MR. LUCAS.

01:56PM 10 SO JUST NOW ON REDIRECT, MR. BOSTIC ASKED YOU ABOUT
01:56PM 11 ASSUMPTIONS THAT UNDERLIE FINANCIAL PROJECTIONS.

01:56PM 12 DO YOU REMEMBER THAT QUESTION?

01:56PM 13 A. YES.

01:56PM 14 Q. AND THE WAY FINANCIAL PROJECTIONS WORK, IS THAT IF THE
01:56PM 15 ASSUMPTIONS THAT GO INTO THE PROJECTION CHANGED, THEN THE
01:56PM 16 PROJECTION WOULD CHANGE.

01:56PM 17 IS THAT FAIR?

01:56PM 18 A. CORRECT.

01:56PM 19 Q. BECAUSE THERE ARE VARIABLES THAT GO INTO A PROJECTION;
01:56PM 20 RIGHT?

01:56PM 21 A. YES.

01:56PM 22 Q. AND SO IN THAT EXERCISE, THE ASSUMPTIONS ARE JUST AN
01:56PM 23 ATTEMPT TO DO YOUR BEST TO UNDERSTAND WHAT THE FUTURE MIGHT
01:56PM 24 LOOK LIKE; RIGHT?

01:56PM 25 A. YES.

01:56PM 1 Q. AND YOU COULD PLUG IN DIFFERENT ASSUMPTIONS AND THEN THE
01:56PM 2 OUTPUT WOULD BE DIFFERENT; RIGHT?

01:56PM 3 A. OF COURSE.

01:56PM 4 Q. AND YOU COULD EVEN DO LIKE SORT OF BEST CASE SCENARIO
01:56PM 5 ASSUMPTIONS AND WORST CASE SCENARIO ASSUMPTIONS, THINGS LIKE
01:56PM 6 THAT; RIGHT?

01:56PM 7 A. YES.

01:56PM 8 Q. SO MR. BOSTIC SHOWED YOU THE PAGE WE WERE DISCUSSING. AND
01:57PM 9 LET'S JUST BRING IT UP. IT'S THAT PAGE BATES NUMBER 806 OF
01:57PM 10 EXHIBIT 12022.

01:57PM 11 THIS WAS THE PAGE THAT YOU WERE JUST LOOKING AT WITH
01:57PM 12 MR. BOSTIC. OKAY.

01:57PM 13 SO YOU HAVE TESTIFIED THAT THERANOS, IN YOUR
01:57PM 14 UNDERSTANDING, COULD DO DOZENS OF TESTS; RIGHT?

01:57PM 15 A. YES.

01:57PM 16 Q. IN FACT, YOU'VE SAID THAT MANY TIMES TODAY; RIGHT?

01:57PM 17 AND IF WE HAD DOZENS OF TESTS THAT COULD RUN ON A THERANOS
01:57PM 18 ANALYZER, THAT WOULD BE SOMEWHERE BETWEEN, ON THIS CHART,
01:57PM 19 VERSION 3.0 AND 4.0; IS THAT RIGHT?

01:57PM 20 A. CORRECT.

01:57PM 21 Q. SO THAT MIGHT BE AROUND 3.5?

01:57PM 22 A. SURE.

01:57PM 23 Q. OKAY. AND THEN FINALLY, THERE WAS A QUESTION THAT YOU
01:57PM 24 WERE ASKED ABOUT THOSE PEOPLE IN THAT EXHIBIT WHO THE

01:58PM 25 GOVERNMENT INTRODUCED THAT HAD SOME PRAISE FOR THERANOS AND THE

01:58PM 1 EXPERIENCE THAT THEY HAD; RIGHT?

01:58PM 2 A. YES.

01:58PM 3 Q. AND YOU DON'T KNOW THOSE PEOPLE; RIGHT?

01:58PM 4 A. I DO NOT.

01:58PM 5 Q. BUT WE READ IT TOGETHER HERE TODAY; RIGHT?

01:58PM 6 A. YES.

01:58PM 7 Q. AND IN YOUR EXPERIENCE, YOU WOULD NOT EXPECT PEOPLE TO

01:58PM 8 PRAISE THEIR EXPERIENCE WITH THERANOS IF THEY ACTUALLY HAD A

01:58PM 9 PROBLEM WITH THE ACCURACY OF THE TEST, WOULD YOU?

01:58PM 10 A. I WOULDN'T THINK SO.

01:58PM 11 Q. SO, FOR EXAMPLE, IF YOU HAD A GOOD EXPERIENCE AT A

01:58PM 12 BUSINESS, OR A DOCTOR'S OFFICE, OR A BLOOD TEST FOR THAT

01:58PM 13 MATTER, AND YOU THOUGHT THE LIGHTING WAS NICE AND THE PEOPLE

01:58PM 14 WERE KIND, BUT YOU ACTUALLY, YOU KNOW, GOT A BAD PRODUCT, OR

01:58PM 15 THE RESTAURANT'S FOOD GAVE YOU FOOD POISONING, WOULD YOU WRITE

01:58PM 16 A GLOWING REVIEW OF HOW GREAT THE EXPERIENCE WAS AT THAT POINT?

01:58PM 17 A. NOT ME.

01:58PM 18 Q. OKAY.

01:58PM 19 NO FURTHER QUESTIONS.

01:59PM 20 MR. BOSTIC: NOTHING FURTHER, YOUR HONOR.

01:59PM 21 THE COURT: MAY THIS WITNESS BE EXCUSED?

01:59PM 22 MR. BOSTIC: NO, YOUR HONOR.

01:59PM 23 MR. COOPERSMITH: YES, YOUR HONOR.

01:59PM 24 THE COURT: YOU MAY BE EXCUSED.

01:59PM 25 THE WITNESS: THANK YOU, YOUR HONOR.

01:59PM 1 HAVE A GREAT WEEKEND.

01:59PM 2 THE COURT: YOU AS WELL.

01:59PM 3 THE WITNESS: THANK YOU.

01:59PM 4 THE COURT: DOES THE GOVERNMENT HAVE ANOTHER WITNESS

01:59PM 5 TO CALL?

01:59PM 6 MR. BOSTIC: YES, YOUR HONOR.

01:59PM 7 THE UNITED STATES CALLS DR. AUDRA ZACHMAN.

01:59PM 8 MR. COOPERSMITH: YOUR HONOR, I THINK THERE'S A

01:59PM 9 MATTER THAT WE NEED TO TAKE UP WITH THE COURT. THANK YOU. NOT

01:59PM 10 SURPRISINGLY, YOUR HONOR.

01:59PM 11 THE COURT: SO BEFORE WE BRING THE WITNESS IN,

01:59PM 12 LADIES AND GENTLEMEN, CAN I HAVE ABOUT TEN MINUTES WITH THESE

01:59PM 13 LAWYERS OUTSIDE OF YOUR PRESENCE. LET'S TAKE ABOUT TEN

01:59PM 14 MINUTES.

02:00PM 15 (JURY OUT AT 2:00 P.M.)

02:00PM 16 THE COURT: THANK YOU. PLEASE BE SEATED.

02:00PM 17 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT THE

02:00PM 18 COURTROOM.

02:00PM 19 ALL COUNSEL, MR. BALWANI IS PRESENT. THE NEXT WITNESS IS

02:00PM 20 NOT PRESENT. JUST COUNSEL AND THEIR STAFF ARE PRESENT.

02:00PM 21 WE'LL HAVE A DISCUSSION NOW ABOUT 1434, WHICH IS THE

02:00PM 22 DEFENSE MOTION TO LIMIT TESTIMONY OF PATIENT B.G., BUT I THINK

02:00PM 23 THIS ALSO COVERS THE NEXT WITNESS, THE DOCTOR AS WELL.

02:00PM 24 FIRST OF ALL, MY THRESHOLD QUESTION IS IT'S NOW 2:00

02:00PM 25 O'CLOCK. WILL WE BE ABLE TO FINISH THE TESTIMONY OF BOTH OF

02:01PM 1 THESE WITNESSES TODAY?

02:01PM 2 I UNDERSTAND THAT THEY TRAVEL. THEY'RE HERE FROM PHOENIX,
02:01PM 3 ARE THEY, OR FROM ARIZONA?

02:01PM 4 MR. LEACH: THANK YOU, YOUR HONOR. YES.

02:01PM 5 I DON'T KNOW WHAT THE CROSS-EXAMINATION WILL BE OF THESE
02:01PM 6 TWO WITNESSES, BUT THE DIRECT EXAMINATIONS WILL BE VERY SIMILAR
02:01PM 7 TO THE LENGTH OF WHAT THE COURT OBSERVED IN THE HOLMES CASE.

02:01PM 8 I THINK IT'S PROBABLY ABOUT 40 MINUTES FOR DR. ZACHMAN AND
02:01PM 9 ABOUT 15 ON DIRECT EXAM FOR PATIENT B.G.

02:01PM 10 SO MY HOPE AND EXPECTATION WOULD BE THAT WE CAN FINISH
02:01PM 11 THEM TODAY.

02:01PM 12 THE COURT: OKAY. COUNSEL.

02:01PM 13 MS. ESTRADA: YES, YOUR HONOR. I THINK THAT'S TRUE
02:01PM 14 FOR THE DEFENSE AS WELL, WE SHOULD BE ABLE TO FINISH TODAY.

02:01PM 15 THE COURT: OKAY. GREAT. THANK YOU FOR THAT.

02:01PM 16 WE HAVE THIS MOTION HERE -- WELL, I SHOULD HAVE YOU STATE
02:01PM 17 YOUR APPEARANCE.

02:02PM 18 MS. ESTRADA: I APOLOGIZE. SHAWN ESTRADA ON BEHALF
02:02PM 19 OF MR. BALWANI. AND I REMOVED MY MASK. I HOPE THAT'S OKAY.

02:02PM 20 THE COURT: THAT'S FINE. AND YOU RISE TO ENGAGE THE
02:02PM 21 EXAMINATION AND ALSO TO ARGUE THIS MOTION?

02:02PM 22 MS. ESTRADA: I WON'T BE CONDUCTING THE EXAMINATION.
02:02PM 23 MS. MCDOWELL WILL BE.

02:02PM 24 THE COURT: OKAY.

02:02PM 25 MS. ESTRADA: BUT I DO RISE FOR THIS MOTION.

02:02PM 1 THE COURT: OKAY. THANK YOU.

02:02PM 2 THIS IS A MOTION TO THEN -- WELL, TO REVIEW THE COURT'S
02:02PM 3 RULING ON THE MOTIONS IN LIMINE AND TO -- I THINK WHAT YOU WANT
02:02PM 4 ME TO DO IS TO LIMIT CERTAIN TESTIMONY.

02:02PM 5 MS. ESTRADA: IN PART, YES, YOUR HONOR.

02:02PM 6 THE COURT: RIGHT.

02:02PM 7 MS. ESTRADA: THERE'S A HEARSAY ISSUE WITH RESPECT
02:02PM 8 TO TESTIMONY FROM PATIENT B.G. REGARDING STATEMENTS THAT
02:02PM 9 DR. ZACHMAN MADE TO HER.

02:02PM 10 AND THEN IN ADDITION TO THAT, THERE ARE 403 MATTERS THAT
02:02PM 11 WE WOULD LIKE TO ADDRESS WITH RESPECT TO PORTIONS OF TESTIMONY
02:02PM 12 LIKELY TO COME OUT IN BOTH DR. ZACHMAN AND PATIENT B.G.'S
02:03PM 13 TESTIMONY.

02:03PM 14 THE COURT: OKAY. ALL RIGHT. THANK YOU.

02:03PM 15 AND IN THE COURT'S RULING AT 1326, I THINK IT'S PAGE 18 IS
02:03PM 16 WHAT YOU INFORM ME IN YOUR MOTION, THE COURT MADE ITS RULING AS
02:03PM 17 TO THE MOTION IN LIMINE. I THINK THAT YOUR MOTION WAS TO
02:03PM 18 INSTRUCT THE PROSECUTION NOT TO ASK QUESTIONS DESIGNED TO
02:03PM 19 ELICIT CERTAIN RESPONSES.

02:03PM 20 I THINK I UNDERSTAND WHAT THE ISSUES ARE, THAT THE -- I
02:03PM 21 THINK WE BOTH UNDERSTAND THE ISSUES, THAT THE DOCTOR'S
02:03PM 22 STATEMENTS TO THE PATIENT WOULD BE HEARSAY, BUT THE STATEMENTS
02:03PM 23 OF THE PATIENT WOULD NOT BE AND IT MIGHT BE AN 803(4)
02:03PM 24 EXCEPTION.

02:03PM 25 LET ME START WITH THAT. MR. LEACH.

02:03PM 1 MR. LEACH: WE DON'T QUIBBLE WITH THAT GENERAL
02:03PM 2 PROPOSITION, YOUR HONOR.

02:03PM 3 BUT THE STATEMENTS FROM THE DOCTOR TO THE PATIENTS ARE
02:03PM 4 OFFERED FOR THE NONHEARSAY PURPOSE OF EXPLAINING THE PATIENT'S
02:04PM 5 CONDUCT AS A RESULT OF THE ADVICE.

02:04PM 6 SO MS. GOULD IS TOLD OF A TEST RESULT AND SHE GOES OUT AND
02:04PM 7 GETS ANOTHER TEST RESULT.

02:04PM 8 SO IT'S NOT OFFERED FOR THE TRUTH. IT'S OFFERED TO
02:04PM 9 EXPLAIN THE CONTENT -- EXPLAIN THE CONDUCT.

02:04PM 10 IT'S ALSO OFFERED FOR THE NONHEARSAY PURPOSE OF
02:04PM 11 MATERIALITY OF WHETHER THE RESULT MATTERED TO THE PATIENT AND
02:04PM 12 WHETHER THERE WAS A FRAUD COMMITTED HERE.

02:04PM 13 SO I'M SURE PORTIONS OF THE CONVERSATION ARE OFFERED FOR A
02:04PM 14 HEARSAY PURPOSE, BUT THE ENTIRETY OF THE CONVERSATION IS BOTH
02:04PM 15 HEARSAY AND A NONHEARSAY PURPOSE.

02:04PM 16 DR. ZACHMAN CERTAINLY CAN TESTIFY TO WHAT THE RESULT IS.
02:04PM 17 I'M NOT SURE WHAT THE POINT OF HIDING THE FACT THAT
02:04PM 18 PATIENT B.G. LEARNED OF THAT RESULT WOULD BE OR HOW THAT CAUSES
02:05PM 19 PREJUDICE, AND SO I DON'T SEE A 403 PROBLEM THERE.

02:05PM 20 THE COURT: SO I'M NOT TRYING TO MANAGE YOUR
02:05PM 21 EXAMINATION, BUT MY SENSE IS THAT THE DEFENSE IS NOT OBJECTING
02:05PM 22 TO THE FACT OF THE TEST ITSELF COMING INTO EVIDENCE.

02:05PM 23 MS. ESTRADA: THAT'S CORRECT, YOUR HONOR.

02:05PM 24 THE COURT: AND SO THEN THE NEXT STEP, AS I LOOKED
02:05PM 25 AT THIS, WAS HOW DO WE SOLVE THAT PROBLEM THEN? DOES IT COME

02:05PM 1 IN THROUGH THE DOCTOR, OR IS IT A QUESTION OF WHAT DID YOU
02:05PM 2 LEARN WHEN YOU WENT TO THE DOCTOR?

02:05PM 3 WELL, I LEARNED THAT I HAD, I HAD WHATEVER THE LEVEL IS,
02:05PM 4 OR SOMETHING LIKE THAT.

02:05PM 5 NOW, HOW ELSE WOULD SHE LEARN THAT BUT FROM THE DOCTOR?
02:05PM 6 BUT IT'S HER KNOWLEDGE.

02:05PM 7 AND THAT SEEMS THAT THAT FORMS THE BASIS OF THEN ANY
02:05PM 8 SUBSEQUENT CONDUCT THAT SHE MAY HAVE ENGAGED IN.

02:05PM 9 MS. ESTRADA: I CAN SPEAK TO THAT, YOUR HONOR.

02:05PM 10 THE COURT: YES. SURE.

02:05PM 11 MS. ESTRADA: WITH RESPECT TO -- OF COURSE
02:05PM 12 DR. ZACHMAN CAN TESTIFY THAT PATIENT B.G. RECEIVED TEST
02:05PM 13 RESULTS.

02:05PM 14 AND PATIENT B.G. CAN TESTIFY BASED ON HER PERSONAL
02:06PM 15 KNOWLEDGE OF WHAT THE RESULTS WERE.

02:06PM 16 SO OUR ISSUE IS NOT WITH RESPECT TO THE RESULTS
02:06PM 17 THEMSELVES. IT'S THE HIGHLY EMOTIONAL TESTIMONY FROM
02:06PM 18 PATIENT B.G. AND DR. ZACHMAN ABOUT HER PRIOR MISCARRIAGES
02:06PM 19 BEFORE SHE EVEN SOUGHT THE TEST, ABOUT SPECULATIVE POTENTIAL
02:06PM 20 TREATMENT OPTIONS --

02:06PM 21 THE COURT: OKAY.

02:06PM 22 MS. ESTRADA: -- THAT ARE HIGHLY EMOTIONAL AND
02:06PM 23 HIGHLY PREJUDICIAL, PARTICULARLY GIVEN WHAT WE KNOW ACTUALLY
02:06PM 24 HAPPENED IS THAT DR. ZACHMAN HAD PATIENT B.G. BE RETESTED.

02:06PM 25 THE COURT: RIGHT. SO LET'S -- PARDON ME. LET'S

02:06PM 1 PARSE THAT FOR JUST A MOMENT.

02:06PM 2 SO SOMEHOW THE RECORD IS GOING TO REFLECT -- YOU HAVE NO
02:06PM 3 PROBLEM WITH THE RECORD REFLECTING THE TEST RESULTS WERE X,
02:06PM 4 WHETHER THAT COMES FROM THE DOCTOR SAYING, YES, I TESTED HER,
02:06PM 5 HER TEST RESULTS WERE X.

02:06PM 6 AND THEN THE PATIENT TESTIFIES, I LEARNED MY TEST RESULTS
02:06PM 7 WERE X.

02:06PM 8 LET ME JUST ASK YOU, HER SUBSEQUENT CONDUCT SHOULD BE --
02:07PM 9 SHOULDN'T IT BE BASED ON HER PERSONAL EXPERIENCE AND HOW MUCH
02:07PM 10 OF THAT PERSONAL EXPERIENCE SHOULD COME IN, WHICH IS WHAT YOUR
02:07PM 11 POINT IS?

02:07PM 12 IS IT ONE MISCARRIAGE, TWO MISCARRIAGE, THREE MISCARRIAGES
02:07PM 13 OR IS IT I'VE HAD PREGNANCY DIFFICULTIES IN THE PAST, AND I
02:07PM 14 KNEW THAT THIS TEST RESULT WAS RELATED TO A PROBLEM WITH
02:07PM 15 PREGNANCY?

02:07PM 16 MS. ESTRADA: SO RULE 403 REQUIRES THAT
02:07PM 17 SUBSTANTIALLY MORE PREJUDICIAL THAN PROBATIVE EVIDENCE BE
02:07PM 18 EXCLUDED AS THE COURT, OF COURSE, KNOWS.

02:07PM 19 AND SO THIS IS A WIRE FRAUD CASE. WHAT IS RELEVANT AND
02:07PM 20 PROBATIVE AND ADMISSIBLE IS WHETHER OR NOT PATIENT B.G.'S
02:07PM 21 RESULTS WERE INACCURATE, AND WHETHER SHE HAD MISCARRIAGES PRIOR
02:07PM 22 TO RECEIVING THAT TEST HAS NO BEARING ON WHETHER OR NOT THOSE
02:07PM 23 RESULTS WERE ACCURATE.

02:07PM 24 IN ADDITION TO THAT, WHAT POTENTIAL HIGHLY PREJUDICIAL
02:08PM 25 TREATMENT OPTIONS DR. ZACHMAN CAN CONSIDER --

02:08PM 1 THE COURT: THAT'S THE NEXT LEVEL. WE'RE GOING TO
02:08PM 2 GET TO THAT.

02:08PM 3 MS. ESTRADA: OKAY. MISCARRIAGES.

02:08PM 4 THE COURT: MR. LEACH.

02:08PM 5 MR. LEACH: YOUR HONOR, THIS IS A WIRE FRAUD CASE
02:08PM 6 ABOUT BLOOD TESTING. IT IS NOT A WIRE FRAUD CASE ABOUT CARS,
02:08PM 7 ABOUT MORTGAGE BACKED SECURITIES. IT'S ABOUT BLOOD TESTING.
02:08PM 8 AND IT'S NATURALLY FRAUGHT WITH PEOPLE'S PERSONAL HEALTH AND
02:08PM 9 PERSONAL EXPERIENCES.

02:08PM 10 THE OTHER SIDE TODAY READ THE ENTIRETY OF A PAGE OF A
02:08PM 11 PERSON'S EXPERIENCE ABOUT DIABETES, ABOUT HAVING IT SINCE HE
02:08PM 12 WAS THREE YEARS OLD.

02:08PM 13 YOU CANNOT DIVORCE THE PATIENT EXPERIENCES FROM THEIR
02:08PM 14 MEDICAL HISTORY OR THE CHOICES THEY HAVE TO MAKE BASED ON WHAT
02:08PM 15 THEY'RE GETTING.

02:08PM 16 A RELEVANT ISSUE IN THIS CASE IS WHETHER OR NOT THE TEST
02:08PM 17 RESULTS WERE MATERIAL TO THE RECIPIENTS.

02:08PM 18 THE TEST RESULT AND THE NUMBER AND THE CONTEXT WITH WHICH
02:08PM 19 IT'S RECEIVED IS RELEVANT TO WHETHER OR NOT THIS MATTERED.

02:09PM 20 IF THIS WITNESS WERE TO TESTIFY I GOT A ZERO HCG COUNT AND
02:09PM 21 IT DIDN'T MEAN ANYTHING TO ME, YOU KNOW, I WOULD HAVE BEEN
02:09PM 22 HAPPY WITH ANY NUMBER, THAT PERSON IS NOT DEFRAUDED.

02:09PM 23 THIS PERSON RECEIVED AN INACCURATE RESULT. IT MATTERED TO
02:09PM 24 HER BECAUSE SHE WAS THERE FOR A REASON. IT'S ONE ASSOCIATED
02:09PM 25 WITH THE PARTICULAR BLOOD TEST AT ISSUE HERE.

02:09PM 1 AND THE FACT THAT SHE'S DISCUSSING PARTICULAR TREATMENT
02:09PM 2 OPTIONS WITH HER PHYSICIAN IS EVIDENCE OF THE MATERIALITY OF
02:09PM 3 THE NUMBER AND THE MATERIALITY OF WHAT SHE'S BEING TOLD BY
02:09PM 4 THESE DEFENDANTS.

02:09PM 5 AND IT -- WHAT THE DEFENSE IS TRYING TO DO HERE IS
02:09PM 6 SANITIZE A CASE ABOUT BLOOD TESTING RESULTS INTO SOMETHING
02:09PM 7 COMPLETELY DIFFERENT.

02:09PM 8 THEY'VE BEEN READING ANECDOTE AFTER ANECDOTE OF PATIENTS
02:09PM 9 WHO ARE HAPPY WITH THE LAYOUT OF THE ROOM AND HAPPY WITH THE
02:09PM 10 FINGER PRICK. IT CUTS BOTH WAYS FOR BOTH SIDES.

02:09PM 11 THIS IS NOT UNFAIRLY PREJUDICIAL. THIS GOES TO
02:10PM 12 MATERIALITY, AND IT GOES TO EXPLAINING HER SUBSEQUENT CONDUCT
02:10PM 13 AND HOW THESE RESULTS MATTERED TO HER.

02:10PM 14 AND I APPRECIATE THAT IT'S A CONTEXT WITH SOME
02:10PM 15 SENSITIVITY, BUT IT'S NOT THAT -- ITS PROBATIVE VALUE COULD NOT
02:10PM 16 BE HIGHER FOR MATERIALITY, AND WE'RE IN THE WORLD OF BLOOD
02:10PM 17 TESTING. AND IT'S NOT THE GOVERNMENT THAT CHOSE THAT, IT'S
02:10PM 18 THIS DEFENDANT.

02:10PM 19 MS. ESTRADA: YOUR HONOR, WITH RESPECT TO
02:10PM 20 MATERIALITY, I THINK YOUR HONOR SAID JUST A MINUTE AGO THAT
02:10PM 21 PATIENT B.G. COULD TESTIFY ABOUT HER PREVIOUS MEDICAL
02:10PM 22 EXPERIENCE WITHOUT RUNNING AFOUL OF RULE 403.

02:10PM 23 WE CAN SHOW MATERIALITY BASED ON SHE THOUGHT SHE WAS
02:10PM 24 PREGNANT SO SHE SOUGHT A BLOOD TEST AND WENT TO HER DOCTOR.

02:10PM 25 WHETHER OR NOT SHE HAD THREE MISCARRIAGES PRIOR IS

02:10PM 1 SUBSTANTIALLY MORE PREJUDICIAL THAN IT IS PROBATIVE TO HER
02:10PM 2 DECISION TO GO TO THERANOS, TO BE BLOOD TESTED WHEN SHE THOUGHT
02:11PM 3 SHE MAY BE PREGNANT.

02:11PM 4 AND SHE CAN TESTIFY THAT SHE WORRIED THAT IT WAS HIGH RISK
02:11PM 5 BASED ON HER PREVIOUS MEDICAL EXPERIENCE, BUT FOR TESTIMONY
02:11PM 6 THAT SHE HAD RECEIVED -- THAT SHE HAD EXPERIENCED THREE
02:11PM 7 MISCARRIAGES IS HIGHLY PREJUDICIAL.

02:11PM 8 THE COURT: NO, I UNDERSTAND THAT. IT'S A SENSITIVE
02:11PM 9 NATURE. I THINK MR. LEACH CONCEDES THAT.

02:11PM 10 THIS IS WHAT I WAS TALKING ABOUT EARLIER IN MY PREFATORY
02:11PM 11 COMMENTS ABOUT HOW DOES THAT -- I THINK IT'S MATERIAL. IT
02:11PM 12 FORMS HER BASIS OF KNOWLEDGE AS TO WHY THE HCG COUNT MATTERED
02:11PM 13 TO HER AS OPPOSED TO SOMEONE WITHOUT THAT EXPERIENCE. I THINK
02:11PM 14 THAT'S RELEVANT. I THINK THAT HAS SOME RELEVANCE TO HER AS
02:11PM 15 WELL AS I THINK THERE IS SOME SUBSEQUENT CONDUCT THAT IS
02:11PM 16 RELEVANT.

02:11PM 17 BUT HOW TO PARSE THAT OUT? I DON'T WANT TO USE THE WORD
02:11PM 18 "SANITIZE," BUT HOW TO PARSE THAT OUT FOR YOUR 403 CONCERNS IS
02:12PM 19 SOMETHING THAT I WOULD LIKE TO DISCUSS.

02:12PM 20 MS. ESTRADA: SURE. IF I COULD SPEAK TO THAT,
02:12PM 21 YOUR HONOR?

02:12PM 22 THE COURT: YES.

02:12PM 23 MS. ESTRADA: I THINK FOR A WOMAN WHO GOES AND GETS
02:12PM 24 HER BLOOD TESTED BECAUSE SHE THINKS SHE MIGHT BE PREGNANT AND
02:12PM 25 SHE, I BELIEVE, TOOK AN AT-HOME PREGNANCY TEST, AND THEY ARE

02:12PM 1 HER BLOOD TEST RESULTS TO BE LOWER THAN SHE MIGHT EXPECT
02:12PM 2 BECAUSE SHE THINKS THAT SHE IS PREGNANT, THAT IS WHAT IS
02:12PM 3 PROBATIVE HERE.

02:12PM 4 HER PRIOR EXPERIENCE AND PRIOR KNOWLEDGE REGARDING HER
02:12PM 5 MISCARRIAGES HAS NO BEARING ON WHETHER OR NOT HER TEST RESULTS
02:12PM 6 WERE INACCURATE. AND SHE WENT TO THE DOCTOR BECAUSE SHE
02:12PM 7 THOUGHT SHE WAS PREGNANT.

02:12PM 8 THE COURT: BUT DOESN'T THAT -- DOESN'T HER
02:12PM 9 SENSITIVITY AS TO THAT BLOOD TEST AND WHAT IT MEANS TO HER AND
02:12PM 10 HER EXPERIENCE REGARDING BLOOD TESTS, IT SEEMS THAT THERE IS
02:12PM 11 SOME RELEVANCE TO THAT, AS TO WHY SHE WENT TO THE DOCTOR, AND
02:12PM 12 THEN WHAT SHE RECEIVED FROM THE DOCTOR, AND THEN THE RETEST.
02:13PM 13 THE DOCTOR IS GOING TO TESTIFY, I PRESUME, THAT THE NUMBERS
02:13PM 14 WERE A LITTLE ODD, SO THE DOCTOR ORDERED A RETEST, I THINK.

02:13PM 15 SO THERE'S SOME -- IN THAT CONTINUUM, I THINK THAT HAS
02:13PM 16 TO -- IT SEEMS TO ME THAT THAT'S PART OF THAT STORY.

02:13PM 17 MS. ESTRADA: WELL, I RESPECTFULLY, YOUR HONOR, I
02:13PM 18 THINK PATIENT B.G. CAN TESTIFY THAT SHE KNEW THAT A DROP IN HER
02:13PM 19 HCG LEVELS COULD MEAN MISCARRIAGE, BUT SHE DOESN'T NEED TO TELL
02:13PM 20 THE JURY THAT SHE KNEW THAT BECAUSE SHE HAD EXPERIENCED
02:13PM 21 MISCARRIAGES BEFORE. THAT'S PREJUDICIAL.

02:13PM 22 THE COURT: OKAY.

02:13PM 23 MR. LEACH: IT GOES TO MATERIALITY, YOUR HONOR,
02:13PM 24 BECAUSE IT'S NOT JUST THE RESULT ITSELF, BUT IT'S HOW FAR OFF
02:13PM 25 THE RESULT IS.

02:13PM 1 PART OF THE DEFENSE IN THIS CASE IS BAD BLOOD TESTS ARE A
02:14PM 2 FACT OF LIFE. AND IT'S THE DEVIATION IN THE PARTICULAR NUMBERS
02:14PM 3 HERE AND HOW THIS PARTICULAR WITNESS UNDERSTANDS THEIR
02:14PM 4 SIGNIFICANCE THAT EXTENUATES THE MATERIALITY ARGUMENT.

02:14PM 5 SHE'S GOING TO SAY, I WAS HIGHLY SENSITIVE TO EVEN A SMALL
02:14PM 6 CHANGE IN MY HCG BECAUSE THIS IS AN IMPORTANT TEST WHERE IF
02:14PM 7 IT'S NOT PROGRESSING, THAT COULD MEAN BAD THINGS.

02:14PM 8 AND HOW DO YOU KNOW THAT? I KNOW THAT FROM MY PRIOR
02:14PM 9 EXPERIENCE.

02:14PM 10 I DON'T SEE A MEANINGFUL DIFFERENCE BETWEEN YOU WERE --
02:14PM 11 THIS WAS A HIGH RISK PREGNANCY OR YOU KNEW FROM YOUR EXPERIENCE
02:14PM 12 THIS WAS A HIGH RISK PREGNANCY VERSUS I HAD SOME EXPERIENCE
02:14PM 13 HERE. I THINK THAT'S REALLY DANCING ON THE HEAD OF A PIN.

02:14PM 14 THE COURT: WELL, THERE IS SENSITIVITY TO
02:14PM 15 MISCARRIAGE AND JUST THAT WORD "MISCARRIAGE."

02:14PM 16 AND IT DOES, IT CARRIES WITH IT A SYMPATHETIC TONE, IT
02:14PM 17 DOES.

02:14PM 18 AND I UNDERSTAND COUNSEL'S POINT, WHEN THERE'S THREE OF
02:15PM 19 THEM.

02:15PM 20 SO THAT'S WHY I WAS WONDERING ABOUT HOW TO PHRASE THAT.

02:15PM 21 I DO THINK IT'S MATERIAL THAT HER PERSONAL EXPERIENCE
02:15PM 22 FORMS HER SUBSEQUENT CONDUCT, HER UNIVERSE OF KNOWLEDGE, WHICH
02:15PM 23 IS TO INFORM WHAT DID I DO AND WHAT DID I DO BECAUSE OF MY
02:15PM 24 CIRCUMSTANCE, NOT A GENERAL MEMBER OF THE PUBLIC, BUT MY
02:15PM 25 CIRCUMSTANCE? WHAT DID IT CAUSE ME AND WHAT EFFECT DID THAT

02:15PM 1 HAVE ON ME TO DO WHAT I DID NEXT BASED ON THAT RESULT? AND
02:15PM 2 AGAIN, BASED ON HER UNIVERSE OF KNOWLEDGE.

02:15PM 3 BUT HAVING HER SAY THIS WAS THE THIRD TIME, AND MY HEAD
02:15PM 4 WAS SPINNING, AND I DIDN'T KNOW WHAT TO THINK, THAT'S PROBABLY
02:15PM 5 403 TERRITORY.

02:15PM 6 SO, MR. LEACH, I'M NOT GOING TO PRECLUDE YOU FROM ASKING
02:15PM 7 THAT QUESTION, AGAIN, TO FORM HER UNIVERSE OF KNOWLEDGE.

02:15PM 8 BUT IF IT COMES OUT AS TO PRIOR ISSUES REGARDING
02:16PM 9 PREGNANCY, FERTILITY ISSUES, THOSE TYPES OF THINGS, WHICH IS
02:16PM 10 SOMETHING THAT IS REGRETTABLY COMMON IN OUR CULTURE, I THINK
02:16PM 11 THAT WOULD SOLVE THE 403 ISSUE.

02:16PM 12 MR. LEACH: UNDERSTOOD.

02:16PM 13 THE COURT: AND I DON'T KNOW HOW THAT COMES OUT IN
02:16PM 14 YOUR EXAMINATION OR NOT. BUT I GUESS WHAT I'M SAYING IS THAT
02:16PM 15 TO THE EXTENT THAT THE MOTION ASKS THAT SHE NOT TESTIFY ABOUT
02:16PM 16 THREE TIMES IN A ROW MISCARRIAGES.

02:16PM 17 MR. LEACH: I DON'T THINK I WOULD ASK ABOUT THE
02:16PM 18 NUMBER, YOUR HONOR.

02:16PM 19 THE COURT: NO.

02:16PM 20 MR. LEACH: AND I CAN TRY TO LEAD IN A WAY TO AVOID
02:16PM 21 THE NUMBER.

02:16PM 22 I DO INTEND TO ASK "HAVE YOU HAD DIFFICULTY GETTING
02:16PM 23 PREGNANT IN THE PAST?"

02:16PM 24 THE COURT: RIGHT.

02:16PM 25 MR. LEACH: I THINK THAT'S FAIR, AND IT EXPLAINS HER

02:16PM 1 REASONS FOR GOING.

02:16PM 2 AND I DO INTEND TO ASK, WHEN YOU GOT THE, I'LL CALL IT,
02:16PM 3 THE INACCURATE RESULT FROM THERANOS.

02:16PM 4 THE COURT: RIGHT.

02:16PM 5 MR. LEACH: MY FRIENDS ON THE OTHER SIDE MIGHT
02:16PM 6 DISAGREE. BUT WHEN YOU GOT THOSE RESULTS, DID YOU DISCUSS
02:17PM 7 TREATMENT ACTIONS WITH DR. ZACHMAN?

02:17PM 8 THE COURT: OR NEXT STEPS.

02:17PM 9 MR. LEACH: AND NEXT STEPS.

02:17PM 10 THE COURT: RIGHT. MAYBE NEXT STEPS IS THE WAY, OR
02:17PM 11 TREATMENT OPTIONS.

02:17PM 12 I UNDERSTAND THERE IS SOME, AGAIN, SOME SENSITIVITY ABOUT
02:17PM 13 THAT. TREATMENT, I DON'T KNOW, ON THE FLY I'M TRYING TO THINK
02:17PM 14 HOW GENTLE TO PHRASE THAT QUESTION.

02:17PM 15 AND MAYBE TREATMENT OPTIONS IS, YOU KNOW, MEDICAL
02:17PM 16 RECOMMENDATIONS GOING FORWARD.

02:17PM 17 THERE IS SOME SENSITIVITY TO THAT.

02:17PM 18 AND I THINK THE JURY COULD BE -- THE MAKEUP OF OUR JURY, I
02:17PM 19 THINK IT'S -- AND I'M NOT TALKING ABOUT GENDER MAKEUP AT ALL.
02:17PM 20 I'M JUST THINKING THAT THEM BEING FROM THE COMMUNITY IN GENERAL
02:17PM 21 AND OUR COMMON KNOWLEDGE OF THESE ISSUES IS SENSITIVE.

02:17PM 22 MR. LEACH: I APPRECIATE THE COURT'S COMMENTS,
02:17PM 23 YOUR HONOR.

02:17PM 24 I DO NEED TO EMPHASIZE, WE TODAY SAT THROUGH
02:18PM 25 MR. COOPERSMITH LITERALLY READING AN EMAIL ABOUT A PARTICULAR

02:18PM 1 DIABETIC EXPERIENCE.

02:18PM 2 THE COURT: YES.

02:18PM 3 MR. LEACH: AND I THINK THAT'S JUST THE NATURE OF
02:18PM 4 THE SUBJECT MATTER THAT WE'RE TALKING ABOUT.

02:18PM 5 I DON'T THINK 403 REQUIRES WORDSMITHING OF A PARTICULAR
02:18PM 6 PATIENT'S EXPERIENCE TO A WAY THAT, YOU KNOW, JUST CREATES AN
02:18PM 7 ENVIRONMENT THAT WE'RE NOT TALKING ABOUT WHAT IS ALLEGED IN THE
02:18PM 8 INDICTMENT.

02:18PM 9 THE COURT: NO. I UNDERSTAND.

02:18PM 10 MR. LEACH: SO I CAN ASK LEADING QUESTIONS THERE TO
02:18PM 11 TRY TO AVOID WHAT THE COURT IS EXPRESSING.

02:18PM 12 THE COURT: OKAY. I APPRECIATE THAT. THAT'S ALL
02:18PM 13 I'M ASKING YOU TO DO.

02:18PM 14 I DO THINK THAT HER EXPERIENCE WITH PREGNANCIES, AGAIN,
02:18PM 15 FORMS HER UNIVERSE OF KNOWLEDGE, HER UNIVERSE OF EXPERIENCE
02:18PM 16 SUCH THAT SHE CAN -- WOULD BE PERMITTED TO TESTIFY ABOUT WHAT
02:18PM 17 DO THESE BLOOD RESULTS MEAN TO HER BASED ON HER UNDERSTANDING
02:18PM 18 AND WHAT SHE DID NEXT.

02:19PM 19 MS. ESTRADA: I'M SORRY. ONE BRIEF CLARIFYING
02:19PM 20 BEFORE WE MOVE ON TO THE NEXT PIECE, WHICH IS THAT WE -- I
02:19PM 21 THINK YOUR HONOR'S RULING SHOULD APPLY BOTH TO PATIENT B.G.
02:19PM 22 TESTIMONY AND DR. ZACHMAN'S.

02:19PM 23 THE COURT: WELL, THAT'S WHERE WE ARE NEXT, AREN'T
02:19PM 24 WE?

02:19PM 25 MS. ESTRADA: OH.

02:19PM 1 THE COURT: AND DR. ZACHMAN, WHAT DO YOU OBJECT TO
02:19PM 2 HER TESTIMONY?

02:19PM 3 MS. ESTRADA: DR. ZACHMAN, IF SHE WERE TO TESTIFY
02:19PM 4 SIMILARLY THAT PATIENT B.G. HAD EXPERIENCED THREE PRIOR
02:19PM 5 MISCARRIAGES.

02:19PM 6 THE COURT: OH, I SEE. I SEE.

02:19PM 7 MR. BOSTIC, YOU RISE FOR DR. ZACHMAN.

02:19PM 8 MR. BOSTIC: YOUR HONOR, IN CASE IT'S HELPFUL, I'LL
02:19PM 9 BE DOING THE DIRECT OF DR. ZACHMAN, AND I SPOKE TO HER
02:19PM 10 YESTERDAY AND REMINDED MYSELF OF THE RELEVANCE OF THAT
02:19PM 11 PATIENT'S PREVIOUS EXPERIENCE.

02:19PM 12 AND SO JUST TO GIVE THE COURT THE BACKGROUND. THE REASON
02:19PM 13 WHY IT'S RELEVANT DURING DR. ZACHMAN'S TESTIMONY IS THAT
02:20PM 14 PATIENT B.G.'S PREVIOUS EXPERIENCES, AND IN PARTICULAR A FAILED
02:20PM 15 PREGNANCY THAT SHE HAD EXPERIENCED THE SUMMER BEFORE THE
02:20PM 16 PREGNANCY THAT LED TO THE THERANOS TEST, WAS THE REASON WHY
02:20PM 17 DR. ZACHMAN WANTED A SERIES OF HCG FOR THIS PATIENT.

02:20PM 18 SO IT'S AN INTEGRAL PART OF THE STORY ABOUT THIS DOCTOR'S
02:20PM 19 TREATMENT OF THIS PATIENT AND WHY WE ENDED UP HERE IN THE FIRST
02:20PM 20 PLACE, WHY HCG TESTING WAS BEING DONE.

02:20PM 21 SO IT'S ALL PART OF THE DOCTOR TESTIFYING ABOUT THE
02:20PM 22 TREATMENT OF THE PATIENT, AND HOW HCG TESTING IS USED, AND WHY
02:20PM 23 IT'S USED, WHICH SEEMS LIKE IT'S THE CORE OF THE KIND OF
02:20PM 24 TESTIMONY WE WOULD EXPECT TO HEAR FROM A DOCTOR TESTIFYING
02:20PM 25 UNDER CIRCUMSTANCES LIKE THIS.

02:20PM 1 THE COURT: RIGHT.

02:20PM 2 MS. ESTRADA: YOUR HONOR, I THINK I WOULD MAKE ALL
02:20PM 3 OF MY SAME ARGUMENTS THAT I DID JUST A MINUTE AGO ABOUT THE
02:21PM 4 PROBATIVE VALUE OF DR. ZACHMAN'S TESTIMONY, BUT I WON'T REPEAT
02:21PM 5 MYSELF.

02:21PM 6 THE COURT: YES.

02:21PM 7 MS. ESTRADA: WHAT I WILL SAY IS FOR THE SAME
02:21PM 8 REASONS THAT THE COURT JUST RULED THAT PATIENT B.G.'S TESTIMONY
02:21PM 9 ABOUT HER THREE PRIOR MISCARRIAGES IS PREJUDICIAL, THE SAME IS
02:21PM 10 TRUE COMING FROM DR. ZACHMAN.

02:21PM 11 AND I THINK DR. ZACHMAN CAN TESTIFY IN THE SAME WAY, THAT
02:21PM 12 BASED ON HER PATIENT'S PRIOR MEDICAL HISTORY, SHE MADE THE
02:21PM 13 DECISIONS SHE MADE, AND THAT DOES NOT RUN AFOUL OF RULE 403,
02:21PM 14 BUT WHEREAS IF DR. ZACHMAN WERE TO TESTIFY THAT PATIENT B.G.
02:21PM 15 HAD EXPERIENCED THREE PRIOR MISCARRIAGES, THAT ABSOLUTELY RUNS
02:21PM 16 AFOUL OF RULE 403.

02:21PM 17 THE COURT: IF DR. ZACHMAN TESTIFIES THAT HER
02:21PM 18 PATIENT HAD PREVIOUS DIFFICULTIES WITH PREGNANCIES, WHICH IS I
02:21PM 19 THINK THE GRAVAMEN OF WHAT HER TESTIMONY WOULD BE, MR. BOSTIC?

02:21PM 20 MR. BOSTIC: YES, YOUR HONOR. BUT I THINK IN
02:22PM 21 PARTICULAR, IN DR. ZACHMAN'S MIND WAS THE PARTICULAR FAILED
02:22PM 22 PREGNANCY THAT HAPPENED JUST A FEW MONTHS BEFORE THIS PREGNANCY
02:22PM 23 THAT PROMPTED THE TESTING.

02:22PM 24 THE COURT: RIGHT.

02:22PM 25 MR. BOSTIC: I THINK THE TESTIMONY OF A DOCTOR IS

02:22PM 1 DIFFERENT, TOO.

02:22PM 2 THE TESTIMONY OF THE PERSON WHO WENT THROUGH THIS, TALKING
02:22PM 3 ABOUT HER OWN MISCARRIAGES IS OBVIOUSLY MORE EVOCATIVE AND
02:22PM 4 EMOTIONALLY CHARGED THAN A DOCTOR DISCUSSING THE SIGNIFICANCE
02:22PM 5 OF THAT EVENT FROM A CLINICAL PERSPECTIVE.

02:22PM 6 THE COURT: SORRY TO INTERRUPT YOU.

02:22PM 7 BUT THE TESTIMONY WOULD BE -- THE ANTICIPATED TESTIMONY
02:22PM 8 WOULD BE THAT THE DOCTOR WOULD SAY THAT THERE WAS A FAILED
02:22PM 9 PREGNANCY, A DIFFICULT PREGNANCY, A FAILED PREGNANCY?

02:22PM 10 MR. BOSTIC: THAT'S WHAT I WOULD ANTICIPATE,
02:22PM 11 YOUR HONOR.

02:22PM 12 THE COURT: RIGHT.

02:22PM 13 MR. BOSTIC: I WOULD NOT EXPECT HER TO USE THE TERM
02:22PM 14 "MISCARRIAGE" EITHER.

02:22PM 15 THE COURT: OR THE NUMBER.

02:22PM 16 MR. BOSTIC: I DON'T BELIEVE SO, YOUR HONOR.

02:22PM 17 THE COURT: RIGHT. IT JUST REFERS BACK TO THAT.

02:22PM 18 AND THAT HAS -- FROM A CLINICAL STANDPOINT, I DON'T THINK
02:22PM 19 THAT RAISES THE 403 ISSUES AS MUCH AS IT DOES FROM THE ACTUAL
02:23PM 20 PATIENT, WHICH IS WHAT I THINK WE HAVE TAKEN CARE OF BEFORE.

02:23PM 21 SO I'M GOING TO ALLOW THE DOCTOR TO TESTIFY IN THE
02:23PM 22 CLINICAL MEDICAL WAY ABOUT A FAILED PREGNANCY, IF YOU WILL, IF
02:23PM 23 THAT'S HOW SHE TESTIFIES.

02:23PM 24 MS. ESTRADA: JUST ONE PRIOR AS OPPOSED TO THREE?

02:23PM 25 THE COURT: WELL, I THINK THAT'S WHAT MR. BOSTIC

02:23PM 1 SAID. THERE MIGHT BE A HISTORY AND SHE MIGHT TESTIFY THAT
02:23PM 2 THERE WAS A HISTORY OF ISSUES WITH FERTILITY ISSUES OR
02:23PM 3 PREGNANCY ISSUES.

02:23PM 4 BUT IT SOUNDS LIKE THE TESTING REALLY RESOLVED, THIS MOST
02:23PM 5 RECENT TESTING REVOLVES FROM THIS LAST FAILED PREGNANCY.

02:23PM 6 MR. BOSTIC: THAT'S MY IMPRESSION, YOUR HONOR.

02:23PM 7 THIS PATIENT STARTED SEEING THIS DOCTOR AFTER THAT MOST
02:23PM 8 RECENT FAILED PREGNANCY.

02:23PM 9 THE COURT: RIGHT.

02:23PM 10 MR. BOSTIC: SO THIS IS NOT THE DOCTOR WHO TREATED
02:23PM 11 THIS PATIENT THROUGH THAT SERIES OF PREGNANCIES.

02:23PM 12 THE COURT: CORRECT, CORRECT.

02:23PM 13 MR. BOSTIC: AND I THINK IT WAS THE MOST RECENT ONE
02:23PM 14 IN HER MIND WHEN SHE WAS MAKING THE --

02:23PM 15 THE COURT: RIGHT. THE HISTORY WAS WITH A TREATING
02:24PM 16 DOCTOR.

02:24PM 17 WHAT ABOUT TREATMENT OPTIONS?

02:24PM 18 MR. BOSTIC: I THINK IN THE SAME WAY WE SEE THE SAME
02:24PM 19 DIFFERENCES BETWEEN HAVING THE PATIENT HERSELF DISCUSS IT
02:24PM 20 VERSUS A DOCTOR.

02:24PM 21 I THINK A DOCTOR NEEDS TO BE ABLE TO TALK ABOUT THE COURSE
02:24PM 22 OF TREATMENT THAT A PATIENT UNDERWENT AND THE DECISION MAKING.

02:24PM 23 THAT AGAIN GOES TO MATERIALITY, BECAUSE IT SHOWS HOW THIS
02:24PM 24 TESTING IS USED, AND THE FOLLOW-ON DECISIONS THAT STEM FROM ONE
02:24PM 25 RESULT VERSUS ANOTHER RESULT.

02:24PM 1 THE COURT: WHAT WOULD THE TESTIMONY BE LIKE OR WHAT
02:24PM 2 WOULD YOU ASK ABOUT THAT?

02:24PM 3 IS THERE TESTIMONY FROM THE DOCTOR THAT SHE, THE DOCTOR,
02:24PM 4 PRESCRIBED EITHER SPECIFIC OR GAVE GENERAL INFORMATION?

02:24PM 5 MR. BOSTIC: NO, YOUR HONOR.

02:24PM 6 AND I DON'T INTEND TO AFFIRMATIVELY SEEK TESTIMONY ABOUT
02:24PM 7 WHAT WOULD HAVE HAPPENED DOWN THE ROAD IF THIS TEST RESULT
02:24PM 8 HADN'T BEEN PROVEN FALSE.

02:24PM 9 THE COURT: RIGHT.

02:24PM 10 MR. BOSTIC: BUT MY CONCERN IS THAT IN ANSWERING THE
02:25PM 11 QUESTIONS, THE WITNESS MIGHT DESCRIBE WHAT THE NEXT STEPS WOULD
02:25PM 12 HAVE BEEN, AND I JUST DON'T WANT HER TO BE UNDULY LIMITED IN
02:25PM 13 THAT WAY FROM JUST DESCRIBING THAT AT A SUPERFICIAL LEVEL.

02:25PM 14 THE COURT: RIGHT. AND I THINK YOUR OBJECTION,
02:25PM 15 COUNSEL, WAS WITH THE DOCTOR TELLING -- OR EXCUSE ME, THE
02:25PM 16 PATIENT TESTIFYING ABOUT WHAT THE DOCTOR TOLD HER, HER
02:25PM 17 TREATMENT OPTIONS WERE.

02:25PM 18 MS. ESTRADA: YES, BASED ON HEARSAY.

02:25PM 19 THE COURT: YES.

02:25PM 20 MS. ESTRADA: AND THEN ALSO BASED ON 403.

02:25PM 21 THE COURT: RIGHT.

02:25PM 22 SO WHAT ABOUT THAT? THAT IS, B.G. TESTIFIED THE DOCTOR
02:25PM 23 TOLD ME I COULD X, Y, Z, 1, 2, 3.

02:25PM 24 MR. BOSTIC: SO, YOUR HONOR, MR. LEACH WAS PREPARED
02:25PM 25 TO HANDLE THE ARGUMENTS, AND I DON'T WANT TO SWITCH BACK AND

02:25PM 1 FORTH TOO MANY TIMES, BUT I JUMPED UP ONLY TO GIVE SOME CONTEXT
02:25PM 2 FOR DR. ZACHMAN.

02:25PM 3 THE COURT: RIGHT.

02:25PM 4 MR. BOSTIC: BUT IT SEEMS, AGAIN, FOR THE SAME
02:25PM 5 REASONS THAT THE PATIENT SHOULD BE ABLE TO TESTIFY ABOUT HER
02:25PM 6 EXPERIENCE, AND I THINK 403 IS A LINE DRAWING EXERCISE FOR THE
02:26PM 7 COURT.

02:26PM 8 I THINK THE COURT HAS CONSIDERED WHERE TO DRAW THE LINE ON
02:26PM 9 THIS VERY TOPIC A FEW TIMES BOTH IN THE LAST TRIAL AND IN THIS
02:26PM 10 TRIAL, AND I THINK THE COURT HAS DONE A GOOD JOB IN THE PAST OF
02:26PM 11 DRAWING THAT LINE. I DON'T SEE ANY REASON TO REMOVE IT NOW.

02:26PM 12 MR. LEACH: SORRY TO JUMP BACK AND FORTH,
02:26PM 13 YOUR HONOR.

02:26PM 14 WITH RESPECT TO HEARSAY, THE TREATMENT OPTIONS ARE NOT
02:26PM 15 HEARSAY. THEY'RE NOT FACTUAL ASSERTIONS. IT'S A DESCRIPTION
02:26PM 16 OF THE TOPICS OF WHAT THE CONVERSATION MARKS.

02:26PM 17 IT'S IN ESSENCE A DIRECTIVE OR A PROPOSAL OR A QUESTION.
02:26PM 18 YOU KNOW, THESE ARE THE FOUR THINGS THAT YOU COULD DO, AND
02:26PM 19 THOSE AREN'T FACTUAL ASSERTIONS. THEY'RE THE DOCTOR'S
02:26PM 20 STATEMENT OF THE POSSIBLE OPTIONS.

02:26PM 21 SO I'M NOT, I'M NOT -- I DON'T THINK THERE'S AN 803
02:26PM 22 PROBLEM.

02:26PM 23 WITH RESPECT TO THE HEARSAY OR THE 403 ISSUE, AGAIN, IT'S
02:26PM 24 RELEVANT TO EXPLAIN WHAT THIS PATIENT DID AND WHETHER OR NOT,
02:26PM 25 YOU KNOW, A 1,250 NUMBER OR A 125 NUMBER MATTERED TO HER.

02:27PM 1 SO I CAN KEEP IT AT THE LEVEL THAT WE TALKED ABOUT,
02:27PM 2 POSSIBLE MEDICAL OPTIONS.

02:27PM 3 BUT THAT'S NOT HEARSAY AND I THINK IT'S -- WHATEVER 403
02:27PM 4 CONCERNS THERE ARE, ARE OUTWEIGHED BY THE MATERIALITY OF THE
02:27PM 5 NEWS SHE'S RECEIVING AND WHETHER OR NOT SHE WAS DEFRAUDED OR
02:27PM 6 NOT.

02:27PM 7 THE COURT: THANK YOU. SO IT SOUNDS LIKE YOUR
02:27PM 8 EXAMINATION WOULD BE, AND DID YOU DISCUSS -- OR MEDICAL OPTIONS
02:27PM 9 BASED ON THE TEST RESULTS? AND SHE'LL SAY YES OR NO.

02:27PM 10 AND THEN YOU'LL ASK HER, WHAT DID YOU DO NEXT PRESUMABLY.
02:27PM 11 AND THAT WILL MOVE INTO THE RETEST?

02:27PM 12 MR. LEACH: YES.

02:27PM 13 THE COURT: I SEE. OKAY.

02:27PM 14 MS. ESTRADA: I THINK IF THE QUESTION WAS, DID YOU
02:27PM 15 DISCUSS MEDICAL OPTIONS, AND THE ANSWER WAS YES, AND THEN IT
02:27PM 16 MOVED INTO RETEST, THEN THAT WOULD -- I THINK WE WOULD HAVE NO
02:28PM 17 OBJECTION TO THAT.

02:28PM 18 THE COURT: WELL, YES, THAT'S WHAT I JUST HEARD
02:28PM 19 MR. LEACH JUST SAY, THEY DISCUSSED MEDICAL OPTIONS.

02:28PM 20 MY SENSE IS THAT PEOPLE ARE GOING TO UNDERSTAND WHAT THAT
02:28PM 21 MEANS, MEDICAL OPTIONS.

02:28PM 22 I DON'T SEE ANY 403 ISSUE AS TO THAT GENERAL DESCRIPTION
02:28PM 23 OF MEDICAL OPTIONS, A DESCRIPTION OF -- WITH DESCRIPTIVE
02:28PM 24 DIALOGUE OF PROCEDURES AND HOW AND WHAT AND WHAT HAPPENS IS TOO
02:28PM 25 FAR, RIGHT? AND THAT'S NOT WHAT IS GOING ON.

02:28PM 1 MS. ESTRADA: PRECISELY.

02:28PM 2 AND I THINK WE JUST -- OBVIOUSLY THIS IS VERY EMOTIONAL,
02:28PM 3 HIGHLY EMOTIONAL TESTIMONY, AND I'M HEARING FROM THE GOVERNMENT
02:28PM 4 MAYBE SOME CONCERNS.

02:28PM 5 BUT WE JUST REALLY HOPE AND EXPECT THE GOVERNMENT TO
02:28PM 6 INSTRUCT THEIR WITNESSES TO ADHERE TO THE COURT'S RULING, TO
02:28PM 7 LEAD THEIR WITNESSES TO ENSURE THAT THEY DON'T RUN AFOUL OF
02:28PM 8 RULE 403.

02:28PM 9 I DON'T THINK THAT WE'LL HAVE ANY ISSUE.

02:28PM 10 THE COURT: DO YOU LACK CONFIDENCE THAT MR. LEACH IS
02:29PM 11 NOT GOING TO DO THAT?

02:29PM 12 MS. ESTRADA: DEFINITELY NOT, BUT I JUST WANT TO
02:29PM 13 MAKE SURE OF THAT.

02:29PM 14 THE COURT: BECAUSE YOU LACK CONFIDENCE?

02:29PM 15 MS. ESTRADA: NO, BECAUSE IF A WITNESS BLURTS
02:29PM 16 SOMETHING OUT, THE RISK OF THAT -- OR THE -- RUNNING AFOUL OF
02:29PM 17 403 IS VERY PROBLEMATIC.

02:29PM 18 THE COURT: SURE. I THINK WE ALL UNDERSTAND. I
02:29PM 19 HAVE CONFIDENCE IN MR. LEACH, AS I DO IN YOUR TEAM, THAT WHEN
02:29PM 20 THE COURT -- WHEN WE HAVE A CONVERSATION ABOUT LIMITING
02:29PM 21 TESTIMONY OR THE INTRODUCTION OF EVIDENCE, YOU'RE GOING TO DO
02:29PM 22 YOUR BEST TO FOLLOW IT.

02:29PM 23 MS. ESTRADA: OF COURSE.

02:29PM 24 THE COURT: BUT WE KNOW THAT ABSENT YOU GOING OUT
02:29PM 25 AND HANDING WITNESSES A SCRIPT, WHICH IS NOT PERMITTED, WE CAN

02:29PM 1 ONLY DO THE BEST THAT WE CAN, AND THAT'S WHY WE'RE TALKING
02:29PM 2 HERE.

02:29PM 3 OKAY. ANYTHING FURTHER?

02:29PM 4 MS. ESTRADA: WELL, THERE WAS ONE OTHER, JUST
02:29PM 5 QUICKLY, YOUR HONOR, ONE OTHER BUCKET OF TESTIMONY WITH RESPECT
02:29PM 6 TO PATIENT B.G.'S POTENTIAL TESTIMONY ABOUT HOW, WHEN SHE WENT
02:29PM 7 TO DR. ZACHMAN'S OFFICE, SHE BROUGHT HER DAUGHTER WITH HER, SHE
02:30PM 8 RECEIVED A GOODIE BAG OF ITEMS FOR NEW MOMS. THAT TESTIMONY,
02:30PM 9 WE ALSO THINK, IS LIKELY TO EVOKE AN EMOTIONAL RESPONSE IN THE
02:30PM 10 JURY, AND IT'S NOT PROBATIVE, AND WE WOULD JUST ASK THAT --

02:30PM 11 THE COURT: MR. LEACH.

02:30PM 12 MR. LEACH: IT IS PROBATIVE, YOUR HONOR.

02:30PM 13 THE DEFENDANT OR THE VICTIM THOUGHT SHE WAS PREGNANT WHEN
02:30PM 14 SHE WALKED INTO THE OFFICE. SHE WAS ADVISED BY THERANOS
02:30PM 15 WALKING OUT THAT SHE WAS NOT.

02:30PM 16 I DON'T SEE HOW THE FACT THAT SHE BRINGS HER DAUGHTER TO
02:30PM 17 THE APPOINTMENT OR THE INITIAL ENTHUSIASM TO BEING -- THINKING
02:30PM 18 SHE WAS PREGNANT THAT'S ELIMINATED BY VIRTUE OF THIS TEST
02:30PM 19 RESULT IS SOMEHOW INFLAMMATORY OR SO FAR AFIELD OF WHAT THIS
02:30PM 20 VICTIM'S EXPERIENCE IS THAT IT'S NOT APPROPRIATE TO EXPLAIN THE
02:30PM 21 BLOOD TEST THAT SHE GOT.

02:30PM 22 AND I JUST FEEL -- AND I HATE TO REPEAT MYSELF. YOU KNOW,
02:31PM 23 WE CAN'T GIVE HER A SCRIPT. WE CAN'T SANITIZE THIS SO WE'RE
02:31PM 24 TALKING ABOUT SOMETHING OTHER THAN WHAT IT IS, BLOOD TESTS
02:31PM 25 OFFERED BY THE DEFENDANT.

02:31PM 1 THE COURT: OKAY. THANK YOU.

02:31PM 2 I DON'T -- I'M GOING TO ALLOW THAT TESTIMONY TO COME IN.

02:31PM 3 I DON'T SEE THAT IT'S A 403 ISSUE. I DON'T SEE THAT AS ANY

02:31PM 4 UNFAIR PREJUDICE OUTWEIGHING THE PROBATIVE VALUE OF HER

02:31PM 5 EXPERIENCE THERE. THERE'S BEEN TALK ABOUT EXPERIENCE.

02:31PM 6 OKAY. SO SHOULD WE BRING HER IN NOW?

02:31PM 7 MS. ESTRADA: NOTHING FURTHER.

02:31PM 8 THE COURT: GREAT. THANK YOU.

02:31PM 9 MR. LEACH: THANK YOU.

02:31PM 10 THE COURT: AND WE'LL BRING THE JURY IN.

02:31PM 11 (JURY IN AT 2:31 P.M.)

02:34PM 12 THE COURT: PLEASE BE SEATED. WE'RE BACK ON THE

02:34PM 13 RECORD. OUR JURY IS NOW PRESENT.

02:34PM 14 ALL COUNSEL AND MR. BALWANI IS PRESENT.

02:34PM 15 LET'S CALL THE NEXT WITNESS.

02:34PM 16 MR. BOSTIC.

02:34PM 17 MR. BOSTIC: YES, YOUR HONOR.

02:34PM 18 THE UNITED STATES CALLS AUDRA ZACHMAN.

02:34PM 19 THE COURT: GOOD AFTERNOON. COME FORWARD.

02:34PM 20 IF YOU COULD COME TO THE SIDE HERE AND FACE OUR COURTROOM

02:34PM 21 WHILE YOU RAISE YOUR RIGHT HAND, SHE HAS A QUESTION FOR YOU.

02:34PM 22 **(GOVERNMENT'S WITNESS, AUDRA ZACHMAN, WAS SWORN.)**

02:34PM 23 THE WITNESS: I DO.

02:35PM 24 THE COURT: PLEASE HAVE A SEAT UP HERE. LET ME ASK

02:35PM 25 YOU TO MAKE YOURSELF COMFORTABLE. ADJUST THE CHAIR AND

02:35PM 1 MICROPHONE AS YOU NEED.

02:35PM 2 THERE'S SOME WATER THERE IF YOU NEED TO REFRESH YOURSELF.

02:35PM 3 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
02:35PM 4 AND SPELL IT, PLEASE.

02:35PM 5 THE WITNESS: YES. MAY I REMOVE THIS?

02:35PM 6 THE COURT: YOU'RE FULLY VACCINATED?

02:35PM 7 THE WITNESS: I AM.

02:35PM 8 THE COURT: YES, YOU MAY.

02:35PM 9 THE WITNESS: AUDRA ZACHMAN, A-U-D-R-A,
02:35PM 10 Z-A-C-H-M-A-N.

02:35PM 11 THE COURT: ALL RIGHT. THANK YOU.

02:35PM 12 MR. BOSTIC IS GOING TO ASK YOU SOME QUESTIONS. I'M JUST
02:35PM 13 GOING TO SHARE SOME HOUSEKEEPING SUGGESTIONS.

02:35PM 14 IF YOU WOULD WAIT UNTIL HE FINISHES HIS QUESTION ENTIRELY
02:35PM 15 BEFORE YOU ANSWER IT, EVEN IF YOU KNOW WHAT THE QUESTION IS
02:35PM 16 GOING TO BE. WAIT UNTIL YOU HEAR THE QUESTION, AND HE PROMISES
02:35PM 17 TO DO THE SAME WITH YOUR ANSWER.

02:35PM 18 IS THAT RIGHT, MR. BOSTIC?

02:35PM 19 MR. BOSTIC: ABSOLUTELY, YOUR HONOR.

02:35PM 20 (LAUGHTER.)

02:35PM 21 THE COURT: GREAT. THANK YOU VERY MUCH. THANK YOU.

02:35PM 22 THE WITNESS: THANK YOU.

02:35PM 23 ///

02:35PM 24 ///

02:35PM 25 ///

DIRECT EXAMINATION

BY MR. BOSTIC:

Q. GOOD AFTERNOON, DR. ZACHMAN.

A. HELLO.

Q. LET ME ASK YOU A FEW QUESTIONS ABOUT YOUR BACKGROUND.

FIRST OF ALL, ARE YOU CURRENTLY EMPLOYED?

A. I AM.

Q. AND WHERE DO YOU WORK?

A. I WORK AT A COMPANY CALLED TIA.

Q. AND WHAT KIND OF BUSINESS IS THAT?

A. IT'S A PRIMARY CARE OFFICE FOR WOMEN.

Q. AND WHAT IS YOUR PROFESSION?

A. I'M A NURSE PRACTITIONER.

Q. WERE YOU EMPLOYED AT THAT SAME PRACTICE IN 2014?

A. I WAS NOT.

Q. WHERE WERE YOU EMPLOYED IN 2014?

A. AT SOUTHWEST CONTEMPORARY WOMEN'S CARE.

Q. AND WERE YOU ALSO WORKING AS A NURSE PRACTITIONER THERE?

A. I WAS.

Q. CAN YOU TELL US IN PLAIN TERMS WHAT A NURSE PRACTITIONER

IS AND HOW IT COMPARES TO, SAY, A MEDICAL DOCTOR OR A, SAY, A

REGISTERED NURSE?

A. SO A NURSE PRACTITIONER IS A LICENSED MEDICAL PROFESSIONAL

WHO CAN SEE AND DIAGNOSE AND TREAT PATIENTS INDEPENDENT OF A

MEDICAL DOCTOR.

02:36PM 1 A REGISTERED NURSE IS A LESSER DEGREE. IT'S A BACHELOR'S
02:37PM 2 WHO CANNOT WORK INDEPENDENTLY. THEY NEED THE GUIDANCE OF A
02:37PM 3 HIGHER DEGREE.

02:37PM 4 Q. CAN YOU TELL US A LITTLE BIT ABOUT THE PLACE YOU WERE
02:37PM 5 WORKING IN 2014? I THINK YOU SAID IT WAS SOUTHWEST
02:37PM 6 CONTEMPORARY?

02:37PM 7 A. THAT'S RIGHT, SOUTHWEST CONTEMPORARY WOMEN'S CARE. IT'S
02:37PM 8 OBVIOUSLY A PRACTICE FOR WOMEN.

02:37PM 9 Q. AND -- BUT HOW MANY NURSE PRACTITIONERS WORKED THERE WHEN
02:37PM 10 YOU WORKED THERE IN 2014?

02:37PM 11 A. WE HAD THREE OFFICE LOCATIONS. THERE WERE PROBABLY 20
02:37PM 12 PROVIDERS ALTOGETHER.

02:37PM 13 AT MY LOCATION THERE WERE MAYBE SEVEN OF THEM.

02:37PM 14 Q. AND HOW ABOUT YOUR PRACTICE THERE, CAN YOU TELL US ROUGHLY
02:37PM 15 WHAT THE NATURE OF YOUR PRACTICE WAS, VOLUME OF PATIENTS,
02:37PM 16 THINGS LIKE THAT?

02:37PM 17 A. SURE.

02:37PM 18 I WOULD SEE WOMEN, SOME PREGNANT, SOME NOT, AND ON AVERAGE
02:38PM 19 I WOULD SEE 20 A DAY EVERY DAY.

02:38PM 20 Q. AND DID YOUR PRACTICE INCLUDE WORKING WITH PATIENTS OR
02:38PM 21 TREATING PATIENTS THROUGHOUT THEIR ENTIRE PREGNANCIES?

02:38PM 22 A. YES, SOME.

02:38PM 23 Q. IN YOUR PRACTICE, DID YOU EVER HAVE ANY EXPERIENCE WITH
02:38PM 24 TEST RESULTS FROM A BLOOD TESTING COMPANY CALLED THERANOS?

02:38PM 25 A. I DID.

02:38PM 1 Q. AND DID YOU EXPERIENCE SOME PROBLEMS WITH THE RESULTS THAT
02:38PM 2 YOU RECEIVED FROM THERANOS?

02:38PM 3 A. I DID.

02:38PM 4 Q. HOW DID YOU FIRST HEAR ABOUT THE COMPANY?

02:38PM 5 A. IN 2014, I HAD A ROLE IN THE PRACTICE AS THE KIND OF LEAD
02:38PM 6 IN A GROUP THAT WE HAD CALLED THE PRODUCT COMMITTEE THAT WAS
02:38PM 7 JUST KIND OF A STOPPING POINT.

02:38PM 8 WE WOULD GET A LOT OF DIFFERENT LABS, DIFFERENT COMPANIES,
02:38PM 9 DIFFERENT REPRESENTATIVES, ET CETERA, COMING THROUGH. SO WE
02:39PM 10 WOULD HAVE A GO-TO PERSON WHO WOULD FILTER THROUGH THAT.

02:39PM 11 SO I WAS THE HEAD OF THAT PRODUCT COMMITTEE IN 2014. AND
02:39PM 12 A REPRESENTATIVE OF THERANOS CAME THROUGH THE OFFICE.

02:39PM 13 Q. AND I'M SORRY IF YOU SAID, BUT WHAT WAS THE PURPOSE OF THE
02:39PM 14 PRODUCT COMMITTEE AT THE PRACTICE?

02:39PM 15 A. TO FILTER THROUGH A LOT OF WHAT CAME THROUGH, TO SEE IF IT
02:39PM 16 WAS APPLICABLE TO THE PRACTICE, AND IF IT WAS SOMETHING WORTH
02:39PM 17 LEARNING MORE ABOUT, SOMETHING WE MIGHT USE OR PREFER.

02:39PM 18 Q. SO ARE WE TALKING ABOUT OUTSIDE VENDORS WHO WANT TO
02:39PM 19 PROVIDE THEIR SERVICES TO THE PRACTICE?

02:39PM 20 A. YES.

02:39PM 21 Q. AND DID THERANOS APPROACH YOU PITCHING ITS BLOOD TESTING
02:39PM 22 SERVICES IN YOUR ROLE ON THE PRODUCT COMMITTEE?

02:39PM 23 A. YES.

02:39PM 24 MR. BOSTIC: MAY I APPROACH, YOUR HONOR?

02:39PM 25 THE COURT: YES.

02:39PM 1 MR. BOSTIC: (HANDING.)

02:39PM 2 THE WITNESS: THANK YOU.

02:39PM 3 BY MR. BOSTIC:

02:39PM 4 Q. DR. ZACHMAN, I'VE JUST HANDED YOU A BINDER WITH A FEW

02:39PM 5 DOCUMENTS.

02:39PM 6 IF I COULD ASK YOU TO LOOK FIRST AT TAB 1805.

02:40PM 7 AND AT 1805, DO YOU SEE AN EMAIL BETWEEN YOU AND SOMEONE

02:40PM 8 AT THERANOS IN JUNE OF 2014?

02:40PM 9 A. I DO.

02:40PM 10 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1805.

02:40PM 11 MS. MCDOWELL: NO OBJECTION.

02:40PM 12 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

02:40PM 13 (GOVERNMENT'S EXHIBIT 1805 WAS RECEIVED IN EVIDENCE.)

02:40PM 14 BY MR. BOSTIC:

02:40PM 15 Q. LET'S ZOOM IN ON THE CONTENT OF THIS PAGE.

02:40PM 16 DO YOU SEE HERE, DR. ZACHMAN, AT THE BOTTOM IS AN EMAIL

02:40PM 17 FROM YOU TO SOMEONE NAMED PEGGY SCHAPLER?

02:40PM 18 A. I DO.

02:40PM 19 Q. AND DID MS. SCHAPLER WORK AT THERANOS?

02:40PM 20 A. ALTHOUGH I DON'T REMEMBER THAT DETAIL, IT APPEARS TO BE

02:40PM 21 TRUE HERE.

02:40PM 22 Q. IN YOUR EMAIL YOU WRITE, "THANK YOU FOR YOUR INTEREST IN A

02:40PM 23 PARTNERSHIP WITH SWCWC."

02:40PM 24 DID THAT STAND FOR THE PRACTICE NAME?

02:40PM 25 A. IT DOES.

02:40PM 1 Q. WHAT DID YOU MEAN BY "PARTNERSHIP"? WHAT KIND OF
02:40PM 2 PARTNERSHIP WERE YOU EXPLORING WITH THERANOS AT THIS TIME?

02:40PM 3 A. TO SEE IF, IN GENERAL, IT WAS A LAB THAT HAD SERVICES THAT
02:41PM 4 MIGHT BE USED BY PATIENTS IN OUR PRACTICE, BUT ALSO IN HAVING
02:41PM 5 AN OFFICE LOCATION CLOSE TO AND IN THE SAME BUILDING AS ONE OF
02:41PM 6 OUR LOCATIONS.

02:41PM 7 Q. OKAY. SO WE'RE TALKING ABOUT TWO DIFFERENT KINDS OF
02:41PM 8 DEALING, BASICALLY? ONE, WHETHER THE PRACTICE WOULD USE
02:41PM 9 THERANOS FOR BLOOD TESTING, AND THEN RELATEDLY, WHETHER
02:41PM 10 THERANOS WOULD ACTUALLY HAVE A PRESENCE IN ONE OF SOUTHWEST'S
02:41PM 11 BUILDINGS?

02:41PM 12 A. YES.

02:41PM 13 Q. IN MS. SCHAPLER'S RESPONSE TO YOU ON JUNE 20TH, DO YOU SEE
02:41PM 14 SHE WRITES, "WE WELCOME THE OPPORTUNITY TO COME AND TALK TO
02:41PM 15 YOUR COMMITTEE ABOUT THERANOS."

02:41PM 16 DO YOU SEE THAT?

02:41PM 17 A. I DO.

02:41PM 18 Q. AND DID THAT END UP HAPPENING? DID A REPRESENTATIVE OR
02:41PM 19 REPRESENTATIVES FROM THERANOS COME AND SPEAK TO THE SOUTHWEST
02:41PM 20 CONTEMPORARY PRODUCT COMMITTEE?

02:42PM 21 A. YES.

02:42PM 22 Q. AND DID THAT HAPPEN AROUND THIS TIME, EARLY SUMMER 2014?

02:42PM 23 A. YES.

02:42PM 24 Q. AS PART OF YOUR ROLE ON THE PRODUCT COMMITTEE, I THINK YOU
02:42PM 25 USED THE TERM FILTERING OUT SOME OF THE PITCHES THAT WOULD COME

02:42PM 1 TO THE PRACTICES; IS THAT RIGHT?

02:42PM 2 A. YES.

02:42PM 3 Q. AND DID THAT ROLE INCLUDE A RESPONSIBILITY FOR EVALUATING
02:42PM 4 AND DECIDING ON WHICH OUTSIDE VENDORS THE PRODUCT WOULD WORK
02:42PM 5 WITH?

02:42PM 6 A. YES.

02:42PM 7 Q. AND WHAT WAS YOUR INDIVIDUAL ROLE IN THAT PROCESS?

02:42PM 8 A. IN REGARDS TO THERANOS OR IN GENERAL?

02:42PM 9 Q. HOW ABOUT IN GENERAL?

02:42PM 10 A. MY ROLE WAS TO SET UP A MEETING THAT WAS LONGER, STILL
02:42PM 11 ONLY ABOUT 50 MINUTES LONG, BUT AS OPPOSED TO A BRIEF
02:42PM 12 INTRODUCTION, TO HAVE SOMETHING A LITTLE MORE FORMAL, TO
02:42PM 13 LISTEN, TAKE NOTES, OF COURSE ASK QUESTIONS, AND SEE IF I FELT
02:43PM 14 THAT ANYTHING THAT WAS BEING PRESENTED WOULD BE APPROPRIATE TO
02:43PM 15 THEN BRING TO A LARGER GROUP, AND THEN I WOULD -- OF ALL OF OUR
02:43PM 16 PROVIDERS IN THE PRACTICE, AND THEN I WOULD RELAY BACK MY
02:43PM 17 OPINION.

02:43PM 18 Q. AND WHEN POTENTIAL VENDORS ARE PRESENTED TO THE PRACTICE
02:43PM 19 AS A WHOLE, HOW WOULD THE DECISION BE MADE ABOUT WHETHER THE
02:43PM 20 PRACTICE WOULD WORK WITH THAT VENDOR OR NOT?

02:43PM 21 A. WE WOULD MEET AS A PRACTICE, ALL OF THE PROVIDERS WOULD,
02:43PM 22 AND WE WOULD KIND OF PASS AROUND THE NOTES THAT I WAS ABLE TO
02:43PM 23 TAKE FROM THE MEETING, I WOULD SPEAK ABOUT WHAT I WAS ABLE TO
02:43PM 24 LEARN, I WOULD GIVE MY OPINION, AND THEN WE WOULD KIND OF HAVE
02:43PM 25 A GROUP CONSENSUS AND VOTE ABOUT IT.

02:43PM 1 Q. AND DID YOU GO THROUGH THAT PROCESS WITH REGARD TO
02:43PM 2 THERANOS?

02:43PM 3 A. YES.

02:43PM 4 Q. AND DID SOUTHWEST CONTEMPORARY END UP USING THERANOS FOR
02:43PM 5 BLOOD TESTING AFTER THAT?

02:43PM 6 A. YES.

02:43PM 7 Q. AND BASED ON HAVING GONE THROUGH THAT PROCESS, DO YOU HAVE
02:44PM 8 A SENSE OF WHAT FACTORS WERE IMPORTANT FOR SOUTHWEST IN
02:44PM 9 DECIDING ON WHETHER TO USE THERANOS OR NOT?

02:44PM 10 A. YES.

02:44PM 11 Q. AND WHAT WERE THOSE FACTORS? WHAT MATTERED TO YOU AND THE
02:44PM 12 OTHER PRACTITIONERS?

02:44PM 13 A. WHEN IT COMES TO LAB RESULTS, I THINK IT IS VERY IMPORTANT
02:44PM 14 TO KNOW THAT THE RESULTS ARE RELIABLE; THAT THEY ARE ACCESSIBLE
02:44PM 15 TO THE PATIENT, WHETHER IT BE FROM A LOCATION OR COST
02:44PM 16 STANDPOINT; THAT THEY'RE MINIMALLY INVASIVE, IF THAT'S
02:44PM 17 AVAILABLE; AND THAT THERE'S A QUICK TURN-AROUND TIME. THAT WAS
02:44PM 18 IMPORTANT TO ME.

02:44PM 19 Q. YOU MENTIONED RELIABILITY FIRST.

02:44PM 20 CAN YOU EXPLAIN WHAT YOU MEAN BY "RELIABILITY" IN THE
02:44PM 21 CONTEXT OF BLOOD TESTS?

02:44PM 22 A. SURE.

02:44PM 23 SO FOR ME, RELIABILITY MEANS THAT THE RESULT THAT YOU'RE
02:44PM 24 GETTING BACK IS THAT YOU CAN INTERPRET FOR YOUR PATIENT AS
02:45PM 25 BEING TRUE, A TRUE REPRESENTATION OF THE PICTURE.

02:45PM 1 Q. YOU ALSO MENTIONED PATIENT COMFORT, OR SOMETHING TO THAT
02:45PM 2 EFFECT?

02:45PM 3 A. UH-HUH.

02:45PM 4 Q. AND YOU ALSO TALKED ABOUT COST AND SPEED AND
02:45PM 5 ACCESSIBILITY; IS THAT RIGHT?

02:45PM 6 A. YES.

02:45PM 7 Q. DO YOU REMEMBER THE PITCH THAT THERANOS GAVE WHEN IT
02:45PM 8 VISITED YOUR PRACTICE IN SUMMER OF 2014?

02:45PM 9 A. BRIEFLY.

02:45PM 10 Q. DID THERANOS MENTION OR MAKE ANY CLAIMS RELEVANT TO THE
02:45PM 11 FACTORS WE'VE BEEN TALKING ABOUT?

02:45PM 12 A. YES.

02:45PM 13 I REMEMBER THOSE POINTS BEING DIFFERENT THAN OTHER LABS
02:45PM 14 AND SPOKEN ABOUT IN REGARDS TO ONLY NEEDING A FINGERSTICK FOR
02:45PM 15 SOME LABS VERSUS A VENOUS PUNCTURE AND HAVING A VERY QUICK
02:45PM 16 TURN-AROUND TIME, WITHIN A DAY OR TWO, AND BEING COST
02:45PM 17 EFFECTIVE, AND TRANSPARENT IN THEIR COST TO THE PATIENT.

02:45PM 18 Q. AND DO YOU REMEMBER THERANOS SAYING ANYTHING TO YOU IN THE
02:46PM 19 PRACTICE ABOUT THE ACCURACY OR THE RELIABILITY OF ITS TESTS?

02:46PM 20 A. I REMEMBER NOT WONDERING IF IT WAS RELIABLE. I DON'T
02:46PM 21 REMEMBER SPECIFIC DETAIL.

02:46PM 22 Q. HOW ABOUT REGARDING HAVING A THERANOS PRESENCE IN THE
02:46PM 23 BUILDING?

02:46PM 24 A. UH-HUH.

02:46PM 25 Q. WHAT DO YOU RECALL ABOUT HOW THAT ARRANGEMENT WAS GOING TO

02:46PM 1 WORK?

02:46PM 2 A. IT WAS AT A LOCATION OF SOUTHWEST THAT I DIDN'T WORK OUT
02:46PM 3 OF.

02:46PM 4 BUT THERE WAS A VACANT BUILDING RIGHT BELOW WHERE WE SAW
02:46PM 5 PATIENTS. AND THE -- YOU KNOW, THE PRACTICE WAS EXCITED ABOUT
02:46PM 6 THAT, ABOUT BEING ABLE TO SEND PATIENTS JUST RIGHT DOWNSTAIRS
02:46PM 7 TO HAVE THEIR BLOOD WORK DONE.

02:46PM 8 Q. AND DID THAT END UP MATERIALIZING?

02:46PM 9 A. YES.

02:46PM 10 Q. FOLLOWING THE PROCESS WITH THE PRODUCT COMMITTEE, THE
02:47PM 11 PRACTICE STARTED REFERRING PATIENTS TO THERANOS FOR PATIENT
02:47PM 12 TESTING?

02:47PM 13 A. YES.

02:47PM 14 Q. AND DID YOU PERSONALLY REFER SOME OF YOUR PATIENTS TO
02:47PM 15 THERANOS FOR PATIENT TESTING?

02:47PM 16 A. YES.

02:47PM 17 Q. DURING YOUR TREATMENT DURING THAT TIME PERIOD, DID YOU SEE
02:47PM 18 A PATIENT NAMED BRITTANY GOULD?

02:47PM 19 A. I DID.

02:47PM 20 Q. AND WHEN DID MS. GOULD BECOME A PATIENT OF YOURS, IF YOU
02:47PM 21 REMEMBER?

02:47PM 22 A. IN 2014.

02:47PM 23 Q. AND HOW DID SHE INITIALLY PRESENT? WHAT BROUGHT HER TO
02:47PM 24 YOU?

02:47PM 25 A. FOR A ROUTINE EXAM, FOR A WELL WOMAN VISIT.

02:47PM 1 Q. WAS SHE PREGNANT AT THE TIME THAT YOU FIRST SAW MS. GOULD?

02:47PM 2 A. NO.

02:47PM 3 Q. AT SOME POINT IN 2014, DID MS. GOULD BECOME PREGNANT?

02:47PM 4 A. YES.

02:47PM 5 Q. AND DID YOU SEE HER FOR AN EXAMINATION SHORTLY AFTER THAT?

02:47PM 6 A. YES.

02:47PM 7 Q. CAN YOU PLACE US IN TIME? DO YOU REMEMBER APPROXIMATELY

02:47PM 8 WHEN IN 2014 YOU FIRST STARTED SEEING MS. GOULD AS A PATIENT

02:48PM 9 WHO WAS EXPECTING?

02:48PM 10 A. I BELIEVE I SAW HER IN THE SUMMER OF 2014 AND MORE OF JULY

02:48PM 11 TIMEFRAME, KIND OF MID-SUMMER, AND THEN THAT PREGNANCY DID NOT

02:48PM 12 RESULT IN A VIABLE PREGNANCY. AND I SAW HER AGAIN FOR A

02:48PM 13 SUBSEQUENT PREGNANCY IN LATE SEPTEMBER.

02:48PM 14 Q. SO IN THE LATE SEPTEMBER TIME PERIOD WHEN MS. GOULD FIRST

02:48PM 15 SAW YOU IN CONNECTION WITH THAT PREGNANCY, DID YOU HAVE A SENSE

02:48PM 16 IN THAT FIRST VISIT AS TO HOW LONG THE PREGNANCY WAS?

02:48PM 17 A. VERY EARLY. SHE HAD HAD PREVIOUS PREGNANCY LOSSES. AND

02:48PM 18 SO WHEN SHE ARRIVED FOR THAT PREGNANCY, IT WAS A LITTLE BIT

02:48PM 19 EARLIER THAN MOST TEND TO COME IN.

02:48PM 20 Q. FROM YOUR STANDPOINT AS A TREATING PHYSICIAN, WHAT WERE

02:48PM 21 THE NEXT STEPS, IN YOUR MIND, FOR TREATING THIS PREGNANT

02:48PM 22 PATIENT?

02:48PM 23 A. BEING THAT SHE WAS VERY EARLY ALONG, WE WEREN'T ABLE TO

02:49PM 24 SEE AN ULTRASOUND YET. WE DIDN'T TRY TO DO AN ULTRASOUND. WE

02:49PM 25 KNEW WE COULDN'T SEE ANYTHING ON THE ULTRASOUND AT THAT TIME.

02:49PM 1 SO THE NEXT STEP IN PROVIDING CARE IN SOMEONE IN EARLY
02:49PM 2 PREGNANCY, IS TO DRAW BLOOD WORK.

02:49PM 3 Q. AND IN DRAWING THE BLOOD WORK, WAS THERE A PARTICULAR TEST
02:49PM 4 THAT YOU WERE INTENDING TO HAVE RUN?

02:49PM 5 A. THERE IS. THERE'S AN HCG.

02:49PM 6 Q. AND WHAT IS HCG? CAN YOU GIVE US A HIGH LEVEL VIEW?

02:49PM 7 A. SURE. IT'S A HORMONE THAT IS SECRETED IN EARLY PREGNANCY
02:49PM 8 THAT WE CAN TREND TO PROVIDE REASSURANCE OR INSIGHT AS TO HOW
02:49PM 9 THE PREGNANCY IS GOING.

02:49PM 10 Q. AND IN CONNECTION WITH MS. GOULD, DID YOU ORDER OR REVIEW
02:50PM 11 A SERIES OF HCG TESTS FOR HER IN SEPTEMBER AND OCTOBER OF 2014?

02:50PM 12 A. I DID.

02:50PM 13 Q. IF I CAN ASK YOU TO LOOK IN YOUR BINDER AT TAB 5410.

02:50PM 14 A. YES.

02:50PM 15 Q. AT 5410, DO YOU SEE A LAB REPORT FOR AN HCG TEST FOR
02:50PM 16 MS. GOULD DATED SEPTEMBER 30TH, 2014?

02:50PM 17 A. I DO.

02:50PM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5410.

02:50PM 19 MS. MCDOWELL: NO OBJECTION.

02:50PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:50PM 21 (GOVERNMENT'S EXHIBIT 5410 WAS RECEIVED IN EVIDENCE.)

02:50PM 22 BY MR. BOSTIC:

02:50PM 23 Q. SO, DR. ZACHMAN, ARE WE NOW LOOKING AT A LAB REPORT FROM A
02:50PM 24 BLOOD TESTING LAB CALLED QUEST DIAGNOSTICS FOR MS. GOULD?

02:50PM 25 A. YES.

02:50PM 1 Q. AND DO WE SEE HERE THAT THE HCG LEVEL IS REPORTED HERE AS
02:51PM 2 BEING 1005?
02:51PM 3 A. YES.
02:51PM 4 Q. OKAY. IF I COULD ASK YOU TO LOOK NEXT AT TAB 20044.
02:51PM 5 AND AT TAB 20044, DO YOU SEE ANOTHER LAB REPORT FOR
02:51PM 6 MS. GOULD, AT THIS TIME FROM THERANOS, AND DATED FROM A VISIT
02:51PM 7 OF OCTOBER 2ND, 2014?
02:51PM 8 A. YES.
02:51PM 9 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2044.
02:51PM 10 MS. MCDOWELL: NO OBJECTION.
02:51PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
02:51PM 12 (GOVERNMENT'S EXHIBIT 2044 WAS RECEIVED IN EVIDENCE.)
02:51PM 13 BY MR. BOSTIC:
02:51PM 14 Q. SO, DR. ZACHMAN, WE SEE HERE ON THE FIRST PAGE THE RESULTS
02:51PM 15 FROM A VISIT ON OCTOBER 2ND, AS WE'VE SAID.
02:51PM 16 DO YOU SEE THAT?
02:52PM 17 A. I DO.
02:52PM 18 Q. AND THIS TIME THERE'S A LABEL. IT SAYS CHORIOGONADOTROPIN
02:52PM 19 ON THE LEFT SIDE.
02:52PM 20 DO YOU SEE THAT?
02:52PM 21 A. YES.
02:52PM 22 Q. AND IS THAT THE SAME THING AS HCG?
02:52PM 23 A. YES.
02:52PM 24 Q. AND THE REPORT VALUE IS 12,558.
02:52PM 25 IS THAT RIGHT?

02:52PM 1 A. YES.

02:52PM 2 Q. AND LET'S LOOK AT PAGE 2 OF THIS EXHIBIT. AND DO YOU SEE

02:55PM 3 NOW THAT WE'RE LOOKING AT A RESULT FROM REVISIT TWO DAYS LATER,

02:55PM 4 ON OCTOBER 4TH, 2014?

02:55PM 5 A. YES.

02:55PM 6 Q. AND THIS IS ALSO FROM THERANOS; CORRECT?

02:55PM 7 A. CORRECT.

02:55PM 8 Q. AND THE RESULT REPORTED ON THIS DATE IS 125.58 FOR HCG?

02:55PM 9 A. YES.

02:55PM 10 Q. OKAY. NEXT, LET'S LOOK AT TAB 3305.

02:55PM 11 AT 3305, DO YOU SEE WE'RE LOOKING AT ANOTHER RESULT FOR

02:55PM 12 MS. GOULD FROM QUEST DIAGNOSTICS AGAIN, AND THIS ONE IS DATED

02:55PM 13 OCTOBER 6TH, 2014?

02:55PM 14 A. YES.

02:55PM 15 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS 3305.

02:55PM 16 MS. MCDOWELL: NO OBJECTION.

02:55PM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:55PM 18 (GOVERNMENT'S EXHIBIT 3305 WAS RECEIVED IN EVIDENCE.)

02:55PM 19 BY MR. BOSTIC:

02:55PM 20 Q. AND, DR. ZACHMAN, DO WE SEE HERE THE RESULTS FROM THIS

02:55PM 21 OCTOBER 6TH DRAW, SO TWO DAYS LATER, IS BACK UP TO A LEVEL

02:55PM 22 OF -- LET'S SEE. CAN I READ THAT?

02:55PM 23 A. I THINK IT'S 9,559.

02:55PM 24 Q. THAT LOOKS RIGHT. THANK YOU.

02:55PM 25 A. YES.

02:55PM 1 Q. SO THAT WAS THE HCG VALUE ON THAT DATE?

02:55PM 2 A. YES.

02:55PM 3 Q. FINALLY, LET'S LOOK AT 5411. AND AT 5411, ARE WE LOOKING
02:55PM 4 AT YET ANOTHER RESULT FROM MS. GOULD FROM THE QUEST DIAGNOSTICS
02:55PM 5 TESTING LAB FROM A DRAW ON OCTOBER 8TH, 2014?

02:55PM 6 A. YES.

02:55PM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5411.

02:55PM 8 MS. MCDOWELL: NO OBJECTION.

02:55PM 9 THE COURT: IT'S ADMITTED.

02:55PM 10 IT MAY BE PUBLISHED.

02:55PM 11 (GOVERNMENT'S EXHIBIT 5411 WAS RECEIVED IN EVIDENCE.)

02:55PM 12 BY MR. BOSTIC:

02:55PM 13 Q. SO HERE WE'RE LOOKING AT RESULTS FROM OCTOBER 8TH, TWO
02:55PM 14 DAYS AFTER THE PREVIOUS DRAW; IS THAT CORRECT?

02:55PM 15 A. YES.

02:55PM 16 Q. AND THE TOTAL IS 17,716 FOR HCG; IS THAT RIGHT?

02:55PM 17 A. YES.

02:55PM 18 Q. WHAT WAS THE ULTIMATE OUTCOME OF MS. GOULD'S PREGNANCY
02:55PM 19 THAT BEGAN IN SEPTEMBER OF 2014?

02:55PM 20 A. SHE HAD A SUCCESSFUL VIABLE PREGNANCY AND DELIVERY.

02:55PM 21 Q. I'D LIKE TO ASK YOU SOME QUESTIONS YOUR INTERPRETATION AND
02:55PM 22 THE CONCLUSIONS THAT YOU DREW FROM THE BLOOD TESTS RESULTS THAT
02:55PM 23 WE JUST LOOKED AT.

02:55PM 24 A. OKAY.

02:55PM 25 Q. BUT FIRST LET ME ASK YOU SOME MORE QUESTIONS ABOUT YOUR

02:55PM 1 BACKGROUND.

02:55PM 2 A. OKAY.

02:55PM 3 Q. CAN YOU SUMMARIZE FOR US YOUR EDUCATION BEGINNING WITH
02:55PM 4 COLLEGE?

02:55PM 5 A. SURE.

02:55PM 6 I GOT MY BACHELOR OF NURSING DEGREE AT ASU IN ARIZONA;
02:55PM 7 THEN I PROCEEDED TO WORK AS A NURSE IN LABOR AND DELIVERY AND
02:55PM 8 ANTEPARTUM AND POSTPARTUM UNITS.

02:55PM 9 AND THEN I WENT ON TO GET MY DOCTOR OF NURSING PRACTICE
02:55PM 10 SPECIALIZING IN WOMEN'S HEALTH.

02:55PM 11 Q. AND FOLLOWING OBTAINING DEGREES, CAN YOU GIVE US AN
02:55PM 12 OVERVIEW OF YOUR WORK EXPERIENCE?

02:55PM 13 A. UH-HUH.

02:55PM 14 I WORKED AS A NURSE IN WOMEN AND INFANT SERVICES, LIKE I
02:55PM 15 JUST SAID; AND THEN AS A NURSE PRACTITIONER I WORKED AT
02:55PM 16 SOUTHWEST CONTEMPORARY WOMEN'S CARE AS A PRACTITIONER FOR EIGHT
02:55PM 17 YEARS BEFORE MY ROLE AT MY CURRENT COMPANY.

02:55PM 18 Q. DID YOU, AS PART OF YOUR TRAINING, DID YOU PARTICIPATE IN
02:55PM 19 AN INTERNSHIP?

02:55PM 20 A. YES. I DID MY INTERNSHIP AT SOUTHWEST CONTEMPORARY WHILE
02:55PM 21 I WAS GETTING MY DEGREE.

02:55PM 22 Q. UNDERSTOOD.

02:55PM 23 HAVE YOU MENTIONED YOUR CLINICAL RESIDENCY? DID YOU GO
02:55PM 24 THROUGH ONE OF THOSE?

02:55PM 25 A. YES. SO THAT WAS ALSO HERE, AND THEN I IMPLEMENTED MY

02:55PM 1 DISSERTATION AND PROJECT STILL AT SOUTHWEST CONTEMPORARY
02:56PM 2 WOMEN'S CARE.

02:56PM 3 Q. AND IN CONNECTION WITH YOUR WORK AS A NURSE PRACTITIONER,
02:56PM 4 DO YOU HOLD PROFESSIONAL LICENSES OR CERTIFICATIONS?

02:56PM 5 A. I DO.

02:56PM 6 Q. AND DO THOSE COME WITH REQUIREMENTS FOR CONTINUING
02:56PM 7 EDUCATION TO BE RECERTIFIED?

02:56PM 8 A. THEY DO.

02:56PM 9 Q. AND ARE THOSE LICENSES CURRENT?

02:56PM 10 A. THEY ARE.

02:56PM 11 Q. AND WERE THEY CURRENT IN 2014 AS WELL?

02:56PM 12 A. THEY WERE.

02:56PM 13 Q. I'D LIKE TO TALK SPECIFICALLY ABOUT YOUR KNOWLEDGE AND
02:56PM 14 TRAINING WHEN IT COMES TO HCG.

02:56PM 15 DID YOU RECEIVE ANY EDUCATION WHILE YOU WERE OBTAINING
02:56PM 16 YOUR DEGREES ON INTERPRETING HCG RESULTS?

02:56PM 17 A. I DID.

02:56PM 18 Q. CAN YOU DESCRIBE THAT BRIEFLY?

02:56PM 19 A. SURE.

02:56PM 20 AS A ROUTINE PART OF MY EDUCATION, OR ANYONE I WOULD THINK
02:56PM 21 WHO IS SPECIALIZING IN WOMEN'S HEALTH, YOU LEARN ABOUT HCG, HOW
02:56PM 22 IT'S PRODUCED, AND WHAT YOU EXPECT THE TRENDS TO BE IN A
02:57PM 23 PREGNANT PATIENT.

02:57PM 24 Q. SO THAT WAS PART OF YOUR FORMAL EDUCATION.

02:57PM 25 HOW ABOUT AFTER YOU OBTAINED YOUR DEGREES, DID YOU GAIN

02:57PM 1 MORE EXPERIENCE IN INTERPRETING HCG RESULTS?

02:57PM 2 A. YES, IT'S A COMMON USED RESULT.

02:57PM 3 Q. I'D LIKE TO GET AN IDEA OF THE VOLUME OF EXPERIENCE YOU'VE
02:57PM 4 HAD WITH HCG RESULTS.

02:57PM 5 I THINK YOU TESTIFIED PREVIOUSLY THAT YOU AVERAGED ABOUT
02:57PM 6 20 PATIENTS PER DAY DURING ACTIVE PRACTICE; IS THAT RIGHT?

02:57PM 7 A. YES.

02:57PM 8 Q. AND WAS THAT THE CASE THROUGHOUT MOST OF YOUR CAREER AS A
02:57PM 9 NURSE PRACTITIONER?

02:57PM 10 A. YES.

02:57PM 11 Q. CAN YOU ESTIMATE FOR US ABOUT HOW MANY HCG TESTS YOU WOULD
02:57PM 12 REVIEW, WHETHER IT'S YEARLY OR WEEKLY? HOWEVER IT'S EASIEST
02:57PM 13 FOR YOU.

02:57PM 14 A. I WOULD GUESSTIMATE THAT MAYBE 5 PER DAY WOULD BE A NORMAL
02:57PM 15 VOLUME TO INTERPRET, SO 25 A WEEK.

02:57PM 16 Q. SO 25 PER WEEK.

02:57PM 17 GIVEN THE LENGTH OF YOUR CAREER, CAN YOU ESTIMATE THEN
02:58PM 18 APPROXIMATELY HOW MANY TOTAL HCG TESTS YOU'VE REVIEWED? AND
02:58PM 19 AGAIN, JUST AT A VERY GENERAL LEVEL.

02:58PM 20 A. YES. I WOULDN'T SAY SPECIFICALLY BECAUSE I DON'T HAVE A
02:58PM 21 CALCULATOR, BUT I WOULD SAY OVER A THOUSAND.

02:58PM 22 Q. AND OVER THE COURSE OF YOUR CAREER IN REVIEWING THAT
02:58PM 23 THOUSAND-PLUS HCG TESTS, IN EACH OF THOSE CASES, DID THE RESULT
02:58PM 24 COME FROM AN OUTSIDE LAB BASED ON THE BLOOD DRAW OF A PATIENT?

02:58PM 25 A. YES.

02:58PM 1 MR. BOSTIC: YOUR HONOR, AT THIS TIME WE OFFER
02:58PM 2 DR. ZACHMAN AS AN EXPERT IN THE AREA OF INTERPRETING HUMAN
02:58PM 3 CHORIOGONADOTROPIN, OR HCG, TEST RESULTS.
02:58PM 4 THE COURT: COUNSEL?
02:58PM 5 MS. MCDOWELL: NO OBJECTION.
02:58PM 6 THE COURT: ALL RIGHT. THANK YOU.
02:58PM 7 THIS WITNESS THEN WILL BE PERMITTED TO TESTIFY PURSUANT TO
02:58PM 8 FEDERAL RULE OF EVIDENCE 702 AS AN EXPERT IN HCG AND MATTERS
02:59PM 9 RELATED TO IT.
02:59PM 10 LADIES AND GENTLEMEN, YOU WILL RECEIVE A FINAL INSTRUCTION
02:59PM 11 AS TO HOW YOU MAY TREAT THIS TESTIMONY AND THIS EVIDENCE.
02:59PM 12 THANK YOU.
02:59PM 13 YOU CAN PROCEED.
02:59PM 14 MR. BOSTIC: THANK YOU, YOUR HONOR.
02:59PM 15 Q. DR. ZACHMAN, IS HCG CATEGORIZED AS A QUALITATIVE OR
02:59PM 16 QUANTITATIVE TEST?
02:59PM 17 A. THERE'S BOTH.
02:59PM 18 Q. AND WHEN IT COMES TO THE QUANTITATIVE VARIETY OF HCG
02:59PM 19 TESTING, HOW DO TREATING PHYSICIANS USE THE NUMBERS THAT THEY
02:59PM 20 GET BACK?
02:59PM 21 A. WE UTILIZE IT -- IT COMES BACK AS A VALUE, AND LESS THAN 5
02:59PM 22 IS CONSIDERED A NONPREGNANT PATIENT AND GREATER THAN 5 IS
02:59PM 23 CONSIDERED PREGNANT, KIND OF AN OVERARCHING VIEW OF WHAT THAT
02:59PM 24 COULD MEAN, AND THEN WE REPEAT THAT LAB. A SINGLE VALUE ISN'T
02:59PM 25 VERY TELLING IN A POSITIVE STATUS. IT'S MORE WHAT HAPPENS

02:59PM 1 AFTER THAT, WHERE DOES IT TREND.

02:59PM 2 Q. SO IN THE CASE THEN OF A HEALTHY AND VIABLE PREGNANCY,
03:00PM 3 WHAT KIND OF TREND ARE YOU EXPECTING TO OBSERVE?

03:00PM 4 A. IN EARLY PREGNANCY YOU'RE EXPECTING IT TO DOUBLE ABOUT
03:00PM 5 EVERY 48 HOURS.

03:00PM 6 Q. AND IF YOU DID NOT SEE THAT DOUBLING, WHAT IS THAT A SIGN
03:00PM 7 OF TO YOU AS A TREATING PHYSICIAN OR A TREATING NURSE
03:00PM 8 PRACTITIONER?

03:00PM 9 A. IT CAN BE A SIGN OF A THREATENED PREGNANCY, MAYBE A
03:00PM 10 MISPLACED PREGNANCY, SOMETHING LIKE AN ECTOPIC PREGNANCY OR
03:00PM 11 PERHAPS A PREGNANCY THAT IS PERHAPS MORE THAN THREATENED AND IS
03:00PM 12 A MISCARRIAGE.

03:00PM 13 Q. I'D LIKE TO TALK TO YOU ABOUT THE SPECIFIC RESULTS THAT
03:00PM 14 BRITTANY GOULD OBTAINED BOTH FROM THERANOS AND FROM THE
03:00PM 15 CONVENTIONAL LAB.

03:00PM 16 AND IF YOU LOOK AT THE FIRST TAB IN YOUR BINDER, THERE'S A
03:00PM 17 TAB LABELLED DEMONSTRATIVE.

03:00PM 18 DO YOU SEE THAT?

03:00PM 19 A. I DO.

03:00PM 20 Q. AND DOES THAT ACCURATELY REFLECT THE SERIES OF TEST
03:00PM 21 RESULTS THAT MS. GOULD OBTAINED, INCLUDING THE DATES?

03:01PM 22 A. IT DOES.

03:01PM 23 MR. BOSTIC: YOUR HONOR, I'D LIKE TO DISPLAY THIS TO
03:01PM 24 THE JURY AS A DEMONSTRATIVE.

03:01PM 25 THE COURT: ANY OBJECTION, COUNSEL?

03:01PM 1 MS. MCDOWELL: NO OBJECTION.

03:01PM 2 THE COURT: ALL RIGHT. THIS WILL BE DISPLAYED AS A
03:01PM 3 DEMONSTRATIVE, LADIES AND GENTLEMEN.

03:01PM 4 IT WILL NOT BE INTRODUCED INTO EVIDENCE, BUT IT'S ADMITTED
03:01PM 5 AND DISPLAYED TO YOU TO EXPLAIN TESTIMONY.

03:01PM 6 AND YOU CAN DISPLAY THAT NOW.

03:01PM 7 MR. BOSTIC: THANK YOU, YOUR HONOR.

03:01PM 8 Q. OKAY. DR. ZACHMAN, DO WE SEE NOW THE SERIES OF RESULTS
03:01PM 9 THAT BRITTANY GOULD OBTAINED FROM THESE TWO LABS?

03:01PM 10 A. YES.

03:01PM 11 Q. I'D LIKE TO START WITH THE FIRST ONE. THAT'S A VALUE OF
03:01PM 12 1,005 ON SEPTEMBER 30TH.

03:01PM 13 DO YOU SEE THAT?

03:01PM 14 A. YES.

03:01PM 15 Q. AND WHAT WOULD THAT VALUE OR WHAT DID THAT VALUE SIGNAL TO
03:01PM 16 YOU AS HER TREATING MEDICAL PROFESSIONAL?

03:01PM 17 A. THAT SHE WAS PREGNANT.

03:01PM 18 Q. MOVING ON TO THE NEXT VALUE. THAT'S TWO DAYS LATER;
03:01PM 19 CORRECT? AND THIS ONE IS FROM THERANOS?

03:01PM 20 A. YES.

03:01PM 21 Q. AND THAT VALUE JUMPS UP TO 12,558; IS THAT RIGHT?

03:02PM 22 A. YES.

03:02PM 23 Q. AND CAN YOU REMIND US WHAT YOU WOULD HAVE EXPECTED TO SEE
03:02PM 24 IN A NORMAL HEALTHY PREGNANCY OVER THIS TWO-DAY PERIOD?

03:02PM 25 A. YES. WE OFTEN SEE ABOUT A DOUBLE, SO MAYBE SOMETHING

03:02PM 1 AROUND 2,000 WOULD HAVE BEEN MORE APPROPRIATE OR ANTICIPATED.

03:02PM 2 Q. ON ITS OWN, WAS THIS MUCH HIGHER RESULT ANY CAUSE FOR
03:02PM 3 CONCERN FOR YOU AT THE TIME?

03:02PM 4 A. YES.

03:02PM 5 Q. AND WHY IS THAT?

03:02PM 6 A. IT'S UNEXPLAINABLE MEDICALLY.

03:02PM 7 Q. MOVING ON. ANOTHER TWO DAYS FORWARD IN TIME. LOOKING AT
03:02PM 8 THE RESULT FROM OCTOBER 4TH, THE NUMBER AGAIN FROM THERANOS
03:02PM 9 FALLS BACK DOWN TO ABOUT 125.

03:02PM 10 DO YOU SEE THAT?

03:02PM 11 A. YES.

03:02PM 12 Q. WHAT WOULD THAT KIND OF DROP SIGNAL TO YOU AS A NURSE
03:02PM 13 PRACTITIONER TREATING THE PREGNANT PATIENT, AGAIN, THE DROP
03:02PM 14 FROM ABOUT 12,000 DOWN TO 125?

03:03PM 15 A. IT SIGNIFIES EITHER A THREATENED PREGNANCY OR A LOSS OF A
03:03PM 16 PREGNANCY.

03:03PM 17 Q. AND IS THAT KIND OF DROP POSSIBLY CONSISTENT WITH A
03:03PM 18 HEALTHY AND VIABLE PREGNANCY?

03:03PM 19 A. NO.

03:03PM 20 Q. IN YOUR EXPERIENCE AS A NURSE PRACTITIONER, HAVE YOU EVER
03:03PM 21 SEEN A HEALTHY VIABLE PREGNANCY THAT EXHIBITED THIS KIND OF
03:03PM 22 DRAMATIC DROP IN HCG LEVELS OVER A TWO DAY PERIOD?

03:03PM 23 A. NO.

03:03PM 24 Q. WE NOW SWITCH BACK TO THE CONVENTIONAL LABS, SONORAQUEST,
03:03PM 25 FOR THE OCTOBER 6TH RESULT.

03:03PM 1 DO YOU SEE THAT?

03:03PM 2 A. YES.

03:03PM 3 Q. AND THE RESULT ON THAT DAY WAS 9,559; IS THAT CORRECT?

03:03PM 4 A. YES.

03:03PM 5 Q. AND SO WE'VE NOW JUMPED BACK UP FROM 125 TO ALMOST 10,000;

03:03PM 6 IS THAT RIGHT?

03:03PM 7 A. YES.

03:03PM 8 Q. AND WHEN YOU RECEIVED THAT RESULT, WHAT WERE YOU THINKING

03:03PM 9 ABOUT THE STATUS OF MS. GOULD'S PREGNANCY?

03:03PM 10 A. IT WAS A LITTLE BIT CONFUSING.

03:04PM 11 Q. EXPLAIN WHY, WHY WERE THESE SEQUENCE OF NUMBERS CONFUSING?

03:04PM 12 A. WELL, YOU WOULDN'T -- IT BRINGS INTO QUESTION WHICH ONE OF

03:04PM 13 THESE RESULTS TO BELIEVE.

03:04PM 14 IF 125 WAS THE TRUE VALUE, IF IT WAS A HEALTHY PREGNANCY,

03:04PM 15 IT'S NOT GOING TO DOUBLE. YOU KNOW, ALMOST 9,000 IS MORE THAN

03:04PM 16 DOUBLE.

03:04PM 17 IF IT'S A LOSS OF A PREGNANCY, IT SHOULDN'T GO UP. SO IT

03:04PM 18 JUST DIDN'T FIT THE PICTURE.

03:04PM 19 Q. AND THEN FINALLY, ON OCTOBER 8TH SONORAQUEST, THE

03:04PM 20 CONVENTIONAL LAB, RETURNED THE RESULT OF 17,716.

03:04PM 21 DO YOU SEE THAT?

03:04PM 22 A. YES.

03:04PM 23 Q. BETWEEN THE 6TH AND THE 8TH, WAS THAT KIND OF JUMP

03:04PM 24 SIGNIFICANT TO YOU AS SOMEONE TRYING TO DETERMINE THE STATUS OF

03:04PM 25 THE PREGNANCY?

03:04PM 1 A. SURE. THAT IS A REASSURING SIGN TO SEE AS IT IS. IT'S
03:04PM 2 ABOUT DOUBLE IN 48 HOURS.

03:05PM 3 Q. LOOKING AT THIS OVERALL SEQUENCE OF RESULTS --

03:05PM 4 A. UH-HUH.

03:05PM 5 Q. I WANT TO ASK YOU TO SET ASIDE THE THERANOS RESULTS FOR A
03:05PM 6 SECOND --

03:05PM 7 A. UH-HUH.

03:05PM 8 Q. -- AND LOOK ONLY AT THE THREE SONORAQUEST RESULTS, AND
03:05PM 9 TELL ME IF, IN YOUR VIEW, THOSE THREE RESULTS ARE CONSISTENT,
03:05PM 10 IF THEY MAKE SENSE TOGETHER AS SIGNIFYING A VIABLE PREGNANCY?

03:05PM 11 A. THEY DO.

03:05PM 12 Q. AND CAN YOU EXPLAIN WHY THAT'S THE CASE?

03:05PM 13 A. SURE.

03:05PM 14 SO YOU WOULD ANTICIPATE THE TREND TO GO EVERY 48 HOURS
03:05PM 15 LIKE THIS, A THOUSAND TO 2-ISH THOUSAND TO 4,000 OR 4500, AND
03:05PM 16 THEN TO 9,000, AND DOUBLE THAT ABOUT 17-, 18,000.

03:05PM 17 Q. AND SO IF THE THERANOS RESULTS WERE NOT IN THE PICTURE, IN
03:05PM 18 OTHER WORDS, YOU WOULD BE LOOKING AT TESTS CONSISTENT WITH A
03:05PM 19 HEALTHY PREGNANCY?

03:05PM 20 A. YES.

03:05PM 21 Q. LOOKING AT THE THERANOS RESULTS, HOWEVER, AND THAT'S BOTH
03:05PM 22 FOR OCTOBER 2ND AND OCTOBER 4TH RESULTS, DID YOU REACH A
03:06PM 23 CONCLUSION ABOUT THE ACCURACY OF THE THERANOS TEST RESULTS?

03:06PM 24 A. I FELT THAT THEY WERE INACCURATE.

03:06PM 25 Q. AND WHAT MADE YOU THINK THAT? OR WHAT LED YOU TO THAT

03:06PM 1 CONCLUSION?

03:06PM 2 A. THAT THEY WERE NOT NEAR THE ANTICIPATED VALUES. I HAD --
03:06PM 3 WITH THE DROP, THE 125 DROP, I HAD CONTACTED BRITTANY TO SEE IF
03:06PM 4 SHE WAS EXPERIENCING SIGNS OF A MISCARRIAGE, AND SHE WAS NOT.
03:06PM 5 IT BROUGHT A LOT INTO THE QUESTION ABOUT THE VALIDITY.

03:06PM 6 Q. IN YOUR OPINION AS A MEDICAL PROFESSIONAL, GIVEN THAT
03:06PM 7 MS. GOULD'S PREGNANCY WAS ULTIMATELY HEALTHY AND DELIVERED AT
03:06PM 8 TERM, COULD BOTH OF THESE THERANOS RESULTS HAVE ACCURATELY
03:06PM 9 REFLECTED THE TRUE HCG LEVELS IN HER BLOOD AT THE TIME?

03:06PM 10 A. NO.

03:06PM 11 Q. AND DID YOU REACH THAT CONCLUSION, APPLYING THE SAME
03:07PM 12 SCIENTIFIC PRINCIPLES THAT YOU APPLY -- DID YOU REACH THAT
03:07PM 13 CONCLUSION, APPLYING THE SAME SCIENTIFIC PRINCIPLES THAT YOU
03:07PM 14 USE IN YOUR DAY-TO-DAY PRACTICE?

03:07PM 15 A. YES.

03:07PM 16 Q. LET ME ASK YOU TO -- ONE MORE VERSION OF THIS QUESTION.
03:07PM 17 IF YOU IGNORE THE OCTOBER 4TH, 2014 RESULTS --

03:07PM 18 A. YES.

03:07PM 19 Q. -- AND LOOK AT THE DROP FROM ABOUT 12,558 TO 9,559, IF YOU
03:07PM 20 JUST LOOK AT THE OCTOBER 2ND AND OCTOBER 6TH RESULTS, AND IF
03:07PM 21 YOU SEE A DROP FROM ABOUT 12,000 DOWN TO 9,000 OVER 4 DAYS,
03:07PM 22 WHAT WOULD THAT SIGNIFY TO YOU ABOUT THE STATUS OF THE
03:07PM 23 PREGNANCY?

03:07PM 24 A. IT WOULD BE CONSIDERED A THREATENED PREGNANCY.

03:08PM 25 Q. WOULD A DROP LIKE THAT EVER BE CONSISTENT WITH A HEALTHY

03:08PM 1 PREGNANCY THAT ENDED UP RESULTING IN A DELIVERY?

03:08PM 2 A. NO.

03:08PM 3 Q. OF THE THOUSAND-PLUS HCG TESTS THAT YOU'VE REVIEWED OVER
03:08PM 4 THE COURSE OF YOUR CAREER TREATING PATIENTS, HAVE YOU EVER
03:08PM 5 ENCOUNTERED PROBLEMS LIKE WHAT YOU SAW WITH THE THERANOS TEST
03:08PM 6 RESULTS FOR HCG?

03:08PM 7 A. NO.

03:08PM 8 Q. LET ME ASK YOU A FEW MORE FACTUAL QUESTIONS ABOUT THE
03:08PM 9 EVENTS THAT CAME AFTER THESE RESULTS.

03:08PM 10 AFTER YOU RECEIVED THESE TEST RESULTS, DID YOU HAVE
03:08PM 11 CONVERSATIONS WITH ANYONE AT THERANOS?

03:08PM 12 A. I DID.

03:08PM 13 Q. AND WHAT WAS THE PURPOSE OF THOSE CONVERSATIONS?

03:08PM 14 A. TO LOOK FOR AN EXPLANATION OF, OF WHAT THESE RESULTS
03:08PM 15 SHOULD HAVE BEEN.

03:08PM 16 Q. AND IF I COULD ASK YOU TO TURN IN YOUR BINDER TO TAB 5184.

03:09PM 17 COULD YOU SEE AT 5184 THERE'S AN EMAIL CHAIN INTERNALLY AT
03:09PM 18 THERANOS RELATING TO TEST RESULTS, INCLUDING THOSE OF
03:09PM 19 MS. GOULD?

03:09PM 20 A. YES.

03:09PM 21 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5184.

03:09PM 22 MS. MCDOWELL: 802 AND FOUNDATION.

03:09PM 23 THE COURT: MR. BOSTIC.

03:09PM 24 MR. BOSTIC: I THINK THE FOUNDATION HAS BEEN LAID
03:09PM 25 THROUGH OTHER WITNESSES FOR THIS AS A BUSINESS RECORD.

03:09PM 1 I'LL ALSO POINT OUT THAT MR. BALWANI IS ON THESE EMAILS,
03:09PM 2 SO THEY'RE RELEVANT FOR NOTICE.

03:09PM 3 THE COURT: IS THIS AN 803(6) PURPOSE?

03:09PM 4 MR. BOSTIC: YES, YOUR HONOR.

03:09PM 5 THE COURT: THANK YOU. THE OBJECTION IS OVERRULED.
03:09PM 6 THIS WILL BE ADMITTED, AND IT MAY BE PUBLISHED.

03:09PM 7 (GOVERNMENT'S EXHIBIT 5184 WAS RECEIVED IN EVIDENCE.)

03:09PM 8 BY MR. BOSTIC:

03:09PM 9 Q. LET'S LOOK FIRST AT THE MIDDLE EMAIL ON THE FIRST PAGE.

03:10PM 10 DO YOU SEE THERE'S A MESSAGE FROM TINA LIN TO A GROUP OF
03:10PM 11 INDIVIDUALS AT THERANOS, INCLUDING MR. BALWANI?

03:10PM 12 A. I SEE THAT.

03:10PM 13 Q. AND IN THE BODY OF THE EMAIL THERE'S SOME MENTION OF
03:10PM 14 MR. GOULD -- I'M SORRY, MS. GOULD'S TEST RESULTS.

03:10PM 15 DO YOU SEE THAT?

03:10PM 16 A. I DO.

03:10PM 17 Q. AND YOU SEE THAT THERE WAS A RERUN FOR THE OCTOBER 4TH
03:10PM 18 SAMPLE?

03:10PM 19 A. YES.

03:10PM 20 Q. AND IT SAYS THAT THE RESULT SHOULD BE MULTIPLIED BY 100
03:10PM 21 AND SO IT WOULD BE 125.58 TIMES 100, OR 12,558.

03:10PM 22 DO YOU SEE THAT?

03:10PM 23 A. I DO.

03:10PM 24 Q. OKAY. IF WE COULD GO BACK TO THE DEMONSTRATIVE.

03:10PM 25 LET ME ASK YOU TWO QUESTIONS ABOUT THAT OCTOBER 4TH

03:10PM

1

NUMBER.

03:10PM

2

FIRST OF ALL, IF THAT NUMBER WERE ADJUSTED TO BE 12,558,

03:11PM

3

IT WOULD BE PRECISELY IDENTICAL TO THE RESULT FROM TWO DAYS

03:11PM

4

AGO.

03:11PM

5

WOULD THAT BE CORRECT?

03:11PM

6

A. CORRECT.

03:11PM

7

Q. IN YOUR EXPERIENCE, IS THAT SOMETHING THAT YOU WOULD

03:11PM

8

EXPECT TO SEE, AND THAT IS, TWO HCG RESULTS COME BACK TO

03:11PM

9

PRECISELY THE SAME VALUE, THE SAME DIGIT, TWO DAYS APART?

03:11PM

10

A. I WOULD NOT ANTICIPATE THAT.

03:11PM

11

Q. IF IT DID COME BACK THAT WAY AND YOU SAW THAT HCG LEVELS

03:11PM

12

HAD STAYED EXACTLY THE SAME OVER A TWO DAY PERIOD, WHAT, IF

03:11PM

13

ANYTHING, WOULD THAT TELL YOU ABOUT THE HEALTH OF THE

03:11PM

14

PREGNANCY?

03:11PM

15

A. IT WOULD BE A CAUSE FOR CONCERN.

03:11PM

16

Q. AND WOULD THAT CONCERN BE COMPOUNDED IF THE LEVEL DROPPED

03:11PM

17

TO DOWN BELOW 10,000 FOR THE NEXT RESULT?

03:11PM

18

A. YES.

03:11PM

19

Q. OKAY. WE CAN PUT THAT ASIDE.

03:11PM

20

IF I COULD ASK YOU TO LOOK AT TAB 2083.

03:12PM

21

DO YOU SEE AT 2083 THERE'S AN EMAIL BETWEEN YOU AND

03:12PM

22

SOMEONE AT THERANOS RELATING TO AN HCG TEST?

03:12PM

23

A. YES.

03:12PM

24

MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2083.

03:12PM

25

MS. MCDOWELL: NO OBJECTION.

03:12PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:12PM 2 (GOVERNMENT'S EXHIBIT 2083 WAS RECEIVED IN EVIDENCE.)

03:12PM 3 BY MR. BOSTIC:

03:12PM 4 Q. HERE, DR. ZACHMAN, WE SEE AN EMAIL FROM SOMEONE NAMED
03:12PM 5 LESLIE NEVILLE AT THERANOS, AND SHE'S CHECKING BACK TO MAKE
03:12PM 6 SURE THAT YOU CHECKED WITH CHRISTIAN HOLMES REGARDING TO THE
03:12PM 7 HCG TEST.

03:12PM 8 DO YOU SEE THAT?

03:12PM 9 A. I DO.

03:12PM 10 Q. DO YOU REMEMBER SPEAKING WITH CHRISTIAN HOLMES IN
03:12PM 11 CONNECTION WITH YOUR CONCERNS ABOUT HCG?

03:12PM 12 A. I REMEMBER SPEAKING TO A MAN OR A MALE VOICE. I DON'T
03:12PM 13 REMEMBER WHO.

03:12PM 14 Q. WERE YOU AWARE, WHEN YOU WERE SPEAKING TO THAT PERSON,
03:12PM 15 ABOUT WHETHER THEY WERE RELATED TO THE CEO OF THE COMPANY, FOR
03:12PM 16 EXAMPLE?

03:12PM 17 A. I -- WHEN I FIRST FILED THE COMPLAINT, I SPOKE TO SOMEONE
03:13PM 18 WHO SOUNDED MORE LIKE THEY WERE MORE HR.

03:13PM 19 AND WHEN I HAD A FORMAL CONVERSATION ABOUT IT, IT WAS --
03:13PM 20 THE IMPRESSION WAS GIVEN THAT I WAS SPEAKING TO SOMEONE WHO WAS
03:13PM 21 PERHAPS HIGHER UP IN THE COMPANY.

03:13PM 22 Q. IF I COULD ASK YOU TO TURN TO 5412 IN YOUR BINDER.

03:13PM 23 AT 5412, DO YOU SEE AN EMAIL BETWEEN YOU AND SOMEONE AT
03:13PM 24 THERANOS AGAIN IN OCTOBER OF 2014 RELATING TO THESE HCG ISSUES?

03:13PM 25 A. YES. SORRY.

03:13PM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5412.

03:13PM 2 MS. MCDOWELL: NO OBJECTION.

03:13PM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:13PM 4 (GOVERNMENT'S EXHIBIT 5412 WAS RECEIVED IN EVIDENCE.)

03:14PM 5 BY MR. BOSTIC:

03:14PM 6 Q. HERE, DR. ZACHMAN, DO YOU SEE THIS IS A MESSAGE FROM

03:14PM 7 CLIENTSOLUTIONS@THERANOS.COM, BUT IT'S SIGNED "BEST REGARDS,

03:14PM 8 CHRISTIAN"?

03:14PM 9 A. YES.

03:14PM 10 Q. WOULD THIS HAVE BEEN AFTER YOU HAD SOME CONVERSATIONS OVER

03:14PM 11 THE TELEPHONE WITH A THERANOS REPRESENTATIVE?

03:14PM 12 A. YES.

03:14PM 13 Q. AND YOU SEE THAT THIS EMAIL READS IN THE SECOND PARAGRAPH,

03:14PM 14 "WE HAVE INVESTIGATED THE MATTER THAT YOU BROUGHT TO OUR

03:14PM 15 ATTENTION RECENTLY AND HAVE DISCOVERED THAT IN THREE OUT OF

03:14PM 16 FOUR CASES, POST-ANALYTICAL HUMAN ERRORS, RESULTED IN THE

03:14PM 17 REPORTING OF INCORRECT RESULT VALUES."

03:14PM 18 DO YOU SEE THAT?

03:14PM 19 A. YES.

03:14PM 20 Q. AND DO YOU HAVE A MEMORY AROUND THIS TIME OF DISCUSSING

03:14PM 21 ADDITIONAL RESULTS BESIDES JUST MS. GOULD'S WITH SOMEONE AT

03:14PM 22 THERANOS?

03:14PM 23 A. I DON'T.

03:14PM 24 Q. DO YOU READ THIS EMAIL AS INDICATING THAT YOU WOULD HAVE

03:14PM 25 BEEN DISCUSSING MULTIPLE RESULTS AT THAT TIME?

03:14PM 1 A. I DO.

03:14PM 2 Q. YOU SEE HERE THAT CHRISTIAN GOES ON TO EXPLAIN THAT THAT

03:15PM 3 HUMAN ERROR CAME IN THE FORM OF REPORTING THE VALUES AS 1/100TH

03:15PM 4 OF THE TRUE CLINICAL VALUES THAT SHOULD HAVE BEEN REPORTED.

03:15PM 5 DO YOU SEE THAT?

03:15PM 6 A. YES.

03:15PM 7 Q. AND DO YOU SEE ABOVE THAT THERE'S THE CLAIM THAT "OUR

03:15PM 8 ASSAYS AND OUR SYSTEMS PERFORMED PERFECTLY WELL, HOWEVER, WE

03:15PM 9 IDENTIFIED 1 STEP IN POST PROCESSING THAT WAS THE CAUSE OF THIS

03:15PM 10 ERROR."

03:15PM 11 DO YOU SEE THAT?

03:15PM 12 A. I DO.

03:15PM 13 Q. AND THEN FINALLY, THERE ARE REPRESENTATIONS ABOUT HAVING

03:15PM 14 FIXED THE PROBLEM.

03:15PM 15 DO YOU SEE THOSE?

03:15PM 16 A. YES.

03:15PM 17 Q. OKAY. WE CAN SET THAT ASIDE.

03:15PM 18 OVER THE COURSE OF CONVERSATIONS WITH REPRESENTATIVES AT

03:15PM 19 THERANOS, DID YOU EVER GET WHAT YOU FELT WERE SATISFACTORY

03:15PM 20 EXPLANATIONS FOR THE PROBLEMS THAT YOU HAD SEEN?

03:16PM 21 A. NO.

03:16PM 22 Q. DID THERE COME A TIME WHEN YOU STOPPED REFERRING YOUR

03:16PM 23 PATIENTS TO THERANOS FOR BLOOD TESTING?

03:16PM 24 A. I WOULD RECOMMEND THAT THEY GO ELSEWHERE.

03:16PM 25 Q. AND WHAT WAS THE REASON FOR YOU MAKING THAT DECISION AND

03:16PM 1 STOPPING SENDING YOUR PATIENTS TO THERANOS?

03:16PM 2 A. I DIDN'T FEEL THAT I COULD MAKE APPROPRIATE DECISIONS
03:16PM 3 BASED OFF OF THE LAB VALUES I MIGHT RECEIVE.

03:16PM 4 Q. AT THE TIME THAT YOU MADE THAT DECISION TO STOP SENDING
03:16PM 5 YOUR PATIENTS TO THERANOS, DO YOU KNOW WHETHER YOUR ENTIRE
03:16PM 6 PRACTICE, SOUTHWEST CONTEMPORARY, MADE THAT SAME DECISION OR
03:16PM 7 NOT?

03:16PM 8 A. I DO NOT THINK IT WAS MADE ALTOGETHER AT THAT TIME.

03:16PM 9 Q. DID THERE COME A TIME LATER WHEN THE PRACTICE AS A WHOLE
03:16PM 10 MADE THAT DECISION TO STOP USING THERANOS?

03:16PM 11 A. YES.

03:16PM 12 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

03:16PM 13 THE COURT: YES.

03:16PM 14 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

03:17PM 15 MR. BOSTIC: NO FURTHER QUESTIONS. THANK YOU.

03:17PM 16 THE COURT: CROSS-EXAMINATION?

03:17PM 17 MS. MCDOWELL: YES, YOUR HONOR.

03:17PM 18 MAY I APPROACH, YOUR HONOR?

03:17PM 19 THE COURT: YES.

03:17PM 20 MS. MCDOWELL: (HANDING.)

03:17PM 21 **CROSS-EXAMINATION**

03:18PM 22 BY MS. MCDOWELL:

03:18PM 23 Q. GOOD AFTERNOON, DR. ZACHMAN.

03:18PM 24 MY NAME IS AMANDA MCDOWELL. I REPRESENT MR. BALWANI. AND
03:18PM 25 I HAVE A FEW QUESTIONS FOR YOU TODAY.

03:18PM 1 SO YOU TESTIFIED JUST NOW THAT YOU REVIEWED MS. GOULD'S

03:18PM 2 THERANOS TEST RESULTS; RIGHT?

03:18PM 3 A. YES.

03:18PM 4 Q. AND YOU TESTIFIED THAT YOU NOTICED A DROP IN HER HCG

03:18PM 5 NUMBERS FROM HER THERANOS RESULTS; CORRECT?

03:18PM 6 A. CORRECT.

03:18PM 7 Q. AND WHEN YOU SAW HER RESULTS, YOU SPOKE TO MS. GOULD;

03:18PM 8 CORRECT?

03:18PM 9 A. CORRECT.

03:18PM 10 Q. AND YOU ADVISED MS. GOULD TO REPEAT HER LABS; CORRECT?

03:18PM 11 A. YES.

03:18PM 12 Q. AND SHE DID REPEAT HER LABS; RIGHT?

03:18PM 13 A. YES.

03:18PM 14 Q. AND THERE ARE OTHER OCCASIONS WHERE YOU HAVE TO RECOMMEND

03:18PM 15 TO YOUR PATIENTS THAT THEY SHOULD REPEAT THEIR LABS; CORRECT?

03:18PM 16 A. CORRECT.

03:18PM 17 Q. AND IT HAPPENS SOMETIMES?

03:18PM 18 A. TO RECOMMEND A REPEAT? YES.

03:18PM 19 Q. IT'S NOT UNIQUE TO THERANOS; CORRECT?

03:18PM 20 A. CORRECT.

03:18PM 21 Q. SO AFTER YOU RECEIVED MS. GOULD'S RESULT, YOU TESTIFIED

03:19PM 22 THAT YOU SPOKE TO THERANOS; RIGHT?

03:19PM 23 A. CORRECT.

03:19PM 24 Q. TO REPORT YOUR CONCERNS; CORRECT?

03:19PM 25 A. CORRECT.

03:19PM 1 Q. AND THERANOS LOOKED INTO IT; RIGHT?

03:19PM 2 A. YES.

03:19PM 3 MS. MCDOWELL: YOUR HONOR, PERMISSION TO PUBLISH
03:19PM 4 PREVIOUSLY ADMITTED EXHIBIT 5184?

03:19PM 5 THE COURT: YES.

03:19PM 6 MS. MCDOWELL: IT'S NOT SHOWING ON THE SCREEN FOR
03:19PM 7 ME. I'M SORRY.

03:19PM 8 Q. OKAY. CAN YOU SEE THAT ON YOUR SCREEN?

03:19PM 9 A. YES.

03:19PM 10 Q. THIS IS AN EMAIL THAT YOU REVIEWED WITH MR. BOSTIC JUST
03:19PM 11 NOW.

03:19PM 12 DO YOU RECALL THAT?

03:19PM 13 A. YES.

03:19PM 14 Q. OKAY. AND IF WE CAN LOOK AT THE BEGINNING OF THIS EMAIL
03:19PM 15 CHAIN. THERE'S AN EMAIL FROM MR. BALWANI ON OCTOBER 6TH, 2014.

03:19PM 16 DO YOU SEE THAT?

03:19PM 17 A. I SEE THAT.

03:19PM 18 Q. AND HE WRITES AN EMAIL TO TINA LIN AND OTHERS; CORRECT?

03:20PM 19 A. I SEE THAT.

03:20PM 20 Q. AND MR. BALWANI WRITES, "CAN U GUYS REVIEW AND CLEAR THIS
03:20PM 21 TOMORROW. I WOULD LIKE THIS CLEARED. THX."

03:20PM 22 DO YOU SEE THAT?

03:20PM 23 A. I SEE THAT.

03:20PM 24 Q. AND SCROLLING DOWN THE LIST, THERE'S A LIST OF NAMES THAT
03:20PM 25 ARE REDACTED FOR PATIENT PRIVACY, BUT AT THE END OF THE LIST

03:20PM 1 YOU SEE BRITTANY GOULD; CORRECT?

03:20PM 2 A. I SEE THAT.

03:20PM 3 Q. AND THEN LOOKING TOWARDS THE END OF THE CHAIN, THERE'S AN

03:20PM 4 EMAIL BACK TO MR. BALWANI FROM MS. LIN ON OCTOBER 7TH, 2014.

03:20PM 5 DO YOU SEE THAT?

03:20PM 6 A. I DO.

03:20PM 7 Q. AND MR. BALWANI IS INFORMED REGARDING BRITTANY GOULD, HER

03:20PM 8 VISIT ON 10/2 WAS OORH.

03:20PM 9 DO YOU SEE THAT?

03:20PM 10 A. I DO.

03:20PM 11 Q. AND DO YOU UNDERSTAND THAT TO MEAN OUT OF RANGE HIGH?

03:21PM 12 A. I -- NO. I'M NOT FAMILIAR WITH THOSE ACRONYMS.

03:21PM 13 Q. IS OORH CONSISTENT --

03:21PM 14 A. IT MAKES SENSE. I'M SORRY. YES, THAT MAKES SENSE.

03:21PM 15 Q. OKAY. AND TINA LIN ALSO REPORTS TO MR. BALWANI, "HER

03:21PM 16 VISIT ON 10/4 WAS ALSO OORH INITIALLY, BUT WE DID A DILUTED

03:21PM 17 RERUN. THE RESULT SHOULD BE MULTIPLIED BY 100 (IT WOULD BE

03:21PM 18 125.58 TIMES 100 EQUALS 12,558).

03:21PM 19 DO YOU SEE THAT?

03:21PM 20 A. YES.

03:21PM 21 Q. AND MS. LIN REPORTS, "AND THAT SHOULD CLOSE IT OUT..."

03:21PM 22 A. CORRECT.

03:21PM 23 Q. AND SO MS. LIN IS REPORTING TO MR. BALWANI HERE THAT

03:21PM 24 MS. GOULD'S RESULTS SHOULD HAVE BEEN MULTIPLIED BY 100;

03:22PM 25 CORRECT?

03:22PM 1 A. THAT'S WHAT I SEE, CORRECT.

03:22PM 2 Q. AND SHE'S REPORTING A DECIMAL ERROR; CORRECT?

03:22PM 3 A. CORRECT.

03:22PM 4 Q. SO AFTER THAT, THERANOS FOLLOWED UP WITH YOU AGAIN;
03:22PM 5 CORRECT?

03:22PM 6 A. CORRECT.

03:22PM 7 MS. MCDOWELL: YOUR HONOR, PERMISSION TO PUBLISH
03:22PM 8 PREVIOUSLY ADMITTED EXHIBIT 2083?

03:22PM 9 THE COURT: YES.

03:22PM 10 BY MS. MCDOWELL:

03:22PM 11 Q. SO, DR. ZACHMAN, THIS IS ANOTHER EMAIL THAT YOU LOOKED AT
03:22PM 12 WITH THE GOVERNMENT?

03:22PM 13 YOU SEE HERE THAT ON OCTOBER 14TH, 2014, LESLIE NEVILLE
03:22PM 14 FROM THERANOS CHECKED BACK WITH YOU; CORRECT?

03:22PM 15 A. CORRECT.

03:22PM 16 Q. ABOUT MS. GOULD'S RESULTS; RIGHT?

03:22PM 17 A. CORRECT.

03:22PM 18 Q. AND THEN THERANOS REACHED OUT TO YOU AGAIN; CORRECT?

03:22PM 19 A. CORRECT.

03:22PM 20 MS. MCDOWELL: YOUR HONOR, PERMISSION TO PUBLISH
03:22PM 21 PREVIOUSLY ADMITTED EXHIBIT 5412?

03:22PM 22 THE COURT: YES.

03:23PM 23 BY MS. MCDOWELL:

03:23PM 24 Q. DR. ZACHMAN, THIS IS ANOTHER EMAIL THAT YOU LOOKED AT WITH
03:23PM 25 THE GOVERNMENT FROM THERANOS TO YOU?

03:23PM 1 DO YOU SEE THAT?

03:23PM 2 A. I DO.

03:23PM 3 Q. ON OCTOBER 22ND, 2014; RIGHT?

03:23PM 4 A. YES.

03:23PM 5 Q. AND IN THE MIDDLE OF THE EMAIL THERANOS REPORTS TO YOU

03:23PM 6 "THE VALUES FOR ASSAY IN QUESTION REPORTED WERE 1/100TH OF THE

03:23PM 7 TRUE CLINICAL VALUES THAT SHOULD HAVE BEEN REPORTED."

03:23PM 8 DO YOU SEE THAT?

03:23PM 9 A. YES.

03:23PM 10 Q. SO SHE IS REPORTING TO YOU THAT THERE'S A DECIMAL ERROR

03:23PM 11 WITH MS. GOULD'S RESULT; CORRECT?

03:23PM 12 A. CORRECT.

03:23PM 13 Q. AND YOU SEE ALSO IN THIS EMAIL THAT THERANOS REPORTED THAT

03:23PM 14 CORRECTIVE ACTION HAD BEEN TAKEN; RIGHT?

03:23PM 15 A. I SEE THAT.

03:23PM 16 Q. AND YOU SEE TOWARDS THE END OF THIS EMAIL THAT THERANOS

03:23PM 17 SINCERELY APOLOGIZED FOR THE ERROR; RIGHT?

03:23PM 18 A. YES.

03:23PM 19 Q. AND MR. HOLMES PROVIDED HIS PERSONAL EMAIL AND CONTACT

03:23PM 20 INFORMATION; CORRECT?

03:23PM 21 A. I SEE THAT.

03:23PM 22 Q. OKAY.

03:24PM 23 YOUR HONOR, PERMISSION TO PUBLISH PREVIOUSLY PUBLISHED

03:24PM 24 EXHIBITS 2044 AND 4242?

03:24PM 25 THE COURT: YES.

03:24PM 1 MS. MCDOWELL: AND I HAVE A DEMONSTRATIVE THAT I
03:24PM 2 WOULD LIKE TO PASS UP BASED ON THESE TWO EXHIBITS.
03:24PM 3 THE COURT: OKAY. DO YOU WANT TO USE THE ELMO FOR
03:24PM 4 THIS?
03:24PM 5 MS. MCDOWELL: ACTUALLY, I'M GOING TO USE THE SPLIT
03:24PM 6 SCREEN WITH MR. ALLEN.
03:24PM 7 PERMISSION TO PUBLISH?
03:24PM 8 THE COURT: YES.
03:24PM 9 AND DID YOU WANT THE WITNESS TO HAVE A COPY?
03:24PM 10 MS. MCDOWELL: I WAS GOING TO PUT IT ON THE SCREEN.
03:24PM 11 Q. SO, DR. ZACHMAN, YOU CAN SEE ON THE LEFT-HAND SIDE OF THIS
03:24PM 12 SCREEN HERE MS. GOULD'S OCTOBER 2ND, 2014 TEST; RIGHT?
03:24PM 13 A. YES.
03:24PM 14 Q. AND YOU SEE THAT REFLECTED ON THE CALENDAR ON THE
03:25PM 15 RIGHT-HAND SIDE OF YOUR SCREEN; CORRECT?
03:25PM 16 A. YES.
03:25PM 17 Q. OKAY. IF YOU CAN GO TO THE NEXT PAGE OF THAT RESULT.
03:25PM 18 SO, DR. ZACHMAN, DO YOU SEE HERE MS. GOULD'S TEST RESULT
03:25PM 19 AND THE DATE OF THE VISIT IS LISTED AS OCTOBER 4TH, 2014;
03:25PM 20 RIGHT?
03:25PM 21 A. YES.
03:25PM 22 Q. AND DO YOU SEE THAT REFLECTED ON THE CALENDAR HERE?
03:25PM 23 A. YES.
03:25PM 24 Q. AND DO YOU SEE THAT THIS REPORT, THE RESULT VALUE IS
03:25PM 25 125.58; RIGHT?

03:25PM 1 A. YES.

03:25PM 2 Q. AND AT THE BOTTOM OF THE RESULT THE REPORT DATE IS LISTED

03:25PM 3 AS OCTOBER 6TH, 2014.

03:25PM 4 DO YOU SEE THAT?

03:25PM 5 A. I SEE THAT.

03:25PM 6 Q. OKAY. AND THAT SHOULD BE REFLECTED ON THE CALENDAR ON

03:25PM 7 YOUR SCREEN?

03:25PM 8 A. OKAY.

03:25PM 9 Q. OKAY. AND THEN IF WE CAN PUT UP EXHIBIT 4242.

03:26PM 10 I APOLOGIZE, YOUR HONOR. I THINK EXHIBIT 4242 IS NOT YET

03:26PM 11 IN EVIDENCE. I APOLOGIZE.

03:26PM 12 THE COURT: DID YOU WANT TO INTRODUCE IT?

03:26PM 13 MS. MCDOWELL: I DO.

03:26PM 14 THE COURT: ANY OBJECTION, MR. BOSTIC, TO 4242?

03:26PM 15 MR. BOSTIC: YOUR HONOR, IF WE CAN JUST HAVE THE

03:26PM 16 WITNESS LAY A FOUNDATION FOR THIS EXHIBIT.

03:26PM 17 THE COURT: SURE.

03:26PM 18 BY MS. MCDOWELL:

03:26PM 19 Q. SO, DR. ZACHMAN, I APOLOGIZE. COULD YOU TURN IN YOUR

03:26PM 20 BINDER TO A TAB LABELLED 4242.

03:26PM 21 A. OKAY.

03:26PM 22 Q. AND DO YOU SEE HERE THAT THIS IS A THERANOS TEST RESULT

03:26PM 23 FOR MS. GOULD?

03:26PM 24 A. I SEE THAT.

03:26PM 25 Q. AND YOU SEE HERE YOU'RE LISTED AS THE PHYSICIAN; CORRECT?

03:26PM 1 A. CORRECT.

03:26PM 2 Q. AND YOU SEE THAT THE VISIT DATE IS OCTOBER 4TH, 2014;

03:27PM 3 RIGHT?

03:27PM 4 A. I SEE THAT.

03:27PM 5 Q. AND YOU SEE A RESULT VALUE HERE; RIGHT?

03:27PM 6 A. YES.

03:27PM 7 Q. FOR AN HCG TEST; CORRECT?

03:27PM 8 A. CORRECT.

03:27PM 9 MS. MCDOWELL: YOUR HONOR, WE MOVE TO ADMIT

03:27PM 10 EXHIBIT 4242.

03:27PM 11 MR. BOSTIC: NO OBJECTION, YOUR HONOR. I'LL NOTE

03:27PM 12 THAT THIS IS ALREADY IN EVIDENCE AS EXHIBIT 2444.

03:27PM 13 THE COURT: I THINK IT IS. I THINK WE LOOKED AT

03:27PM 14 THIS.

03:27PM 15 MS. MCDOWELL: OH, OKAY. I'M SORRY.

03:27PM 16 THE COURT: NO, NO. THAT'S QUITE ALL RIGHT. I'LL

03:27PM 17 ADMIT IT, AND IT MAY BE PUBLISHED.

03:27PM 18 (GOVERNMENT'S EXHIBIT 4242 WAS RECEIVED IN EVIDENCE.)

03:27PM 19 BY MS. MCDOWELL:

03:27PM 20 Q. OKAY. SO, DR. ZACHMAN, ON YOUR SCREEN HERE IS A TEST

03:27PM 21 RESULT FOR MS. GOULD; RIGHT?

03:27PM 22 A. YES.

03:27PM 23 Q. AND THE VISIT DATE IS OCTOBER 4TH, 2014; RIGHT?

03:27PM 24 A. YES.

03:27PM 25 Q. AND THE RESULT VALUE IS 12,558; RIGHT?

03:27PM 1 A. RIGHT.

03:27PM 2 Q. AND THERE'S A CORRECTED -- THIS IS LISTED AS A CORRECTED

03:27PM 3 RESULT; RIGHT?

03:27PM 4 A. CORRECT.

03:27PM 5 Q. AND DO YOU SEE AT THE BOTTOM THERE'S A REPORT DATE OF

03:27PM 6 OCTOBER 8TH, 2014.

03:27PM 7 DO YOU SEE THAT?

03:27PM 8 A. I SEE THAT.

03:27PM 9 Q. OKAY. AND THAT SHOULD BE REFLECTED ON THE CALENDAR.

03:28PM 10 IF WE CAN GO BACK TO THE PREVIOUS EXHIBIT ONE MORE TIME.

03:28PM 11 SO WE'RE LOOKING AT EXHIBIT 2044. THIS IS THE VISIT FROM

03:28PM 12 OCTOBER 2ND, 2014; RIGHT?

03:28PM 13 A. YES.

03:28PM 14 Q. OKAY. AND YOU SEE HERE THE VALUE AGAIN IS 12,558; RIGHT?

03:28PM 15 A. I SEE THAT.

03:28PM 16 Q. AND THE REPORT DATE AT THE BOTTOM IS OCTOBER 8TH, 2014;

03:28PM 17 RIGHT?

03:28PM 18 A. YES.

03:28PM 19 Q. SO THIS SHOULD BE REFLECTED ON YOUR CALENDAR.

03:28PM 20 SO YOU SEE HERE ON OCTOBER 8TH, TWO DIFFERENT REPORTS FOR

03:28PM 21 MS. GOULD WERE ISSUED BY THERANOS; CORRECT?

03:28PM 22 A. I SEE THAT.

03:28PM 23 Q. AND DO YOU SEE ON OCTOBER 6TH THERE WAS A REPORT FOR HER

03:28PM 24 SECOND VISIT; RIGHT? AND THAT WAS MULTIPLIED BY 100; RIGHT?

03:28PM 25 A. I SEE THAT.

03:28PM 1 Q. AND REPORTED ON OCTOBER 8TH; CORRECT?

03:28PM 2 A. CORRECT.

03:29PM 3 Q. AND THEN THERE WAS A SECOND REPORT ISSUED ON OCTOBER 8TH

03:29PM 4 FOR HER FIRST VISIT; CORRECT?

03:29PM 5 A. I SEE THAT.

03:29PM 6 Q. SO THOSE ARE IDENTICAL RESULTS; RIGHT?

03:29PM 7 A. THAT'S RIGHT.

03:29PM 8 Q. AND YOU TESTIFIED THAT THAT WOULDN'T FIT THE CLINICAL

03:29PM 9 PICTURE; CORRECT?

03:29PM 10 A. CORRECT.

03:29PM 11 Q. IF SOMEONE AT THERANOS HAD MADE A TRANSCRIPTION ERROR AND

03:29PM 12 ACCIDENTALLY REPORTED THE SAME RESULT TWICE, WOULD THAT BE ONE

03:30PM 13 EXPLANATION FOR THESE IDENTICAL RESULTS?

03:30PM 14 A. NOT TO ME, NO.

03:30PM 15 Q. IF THE SAME RESULT WAS ACCIDENTALLY REPORTED TWICE, COULD

03:30PM 16 THAT BE ONE EXPLANATION FOR THESE IDENTICAL RESULTS; CORRECT?

03:30PM 17 A. TO ME, THE VALUE DOESN'T MAKE SENSE, THE NUMBER ITSELF.

03:30PM 18 Q. OKAY. I UNDERSTAND THE VALUE DOESN'T MAKE SENSE, BUT IF

03:30PM 19 SOMEONE ACCIDENTALLY REPORTED THE SAME RESULT TWICE, THAT WOULD

03:30PM 20 BE ONE EXPLANATION FOR THE IDENTICAL RESULT; CORRECT?

03:30PM 21 A. CORRECT.

03:30PM 22 Q. SO YOU TESTIFIED TODAY THAT YOU MADE A DECISION TO STOP

03:30PM 23 USING THERANOS; CORRECT?

03:30PM 24 A. CORRECT.

03:30PM 25 Q. BUT YOUR CLINIC DID RESUME USING THERANOS IN 2015; RIGHT?

03:30PM 1 A. YES.

03:30PM 2 Q. AND YOUR CLINIC ALSO SET UP AN ELECTRONIC INTERFACE TO

03:30PM 3 SEND MORE LAB ORDERS TO THERANOS AFTER MS. GOULD'S TEST; RIGHT?

03:30PM 4 A. I DON'T REMEMBER.

03:30PM 5 Q. IF YOU COULD TURN IN YOUR BINDER TO EXHIBIT 20071. LET ME

03:30PM 6 KNOW WHEN YOU HAVE IT IN FRONT OF YOU?

03:30PM 7 A. I DO.

03:30PM 8 Q. OKAY. THANKS.

03:30PM 9 DO YOU SEE THIS IS AN EMAIL FROM MOLLY JO RILEY; RIGHT?

03:30PM 10 A. YES.

03:30PM 11 Q. AND SHE'S AN EMPLOYEE OF SOUTHWEST CONTEMPORARY WOMEN'S

03:31PM 12 CARE; RIGHT?

03:31PM 13 A. YES.

03:31PM 14 Q. AND YOU SEE THAT THIS EMAIL IS SENT TO SEVERAL GROUPS AT

03:31PM 15 YOUR FORMER CLINIC; RIGHT?

03:31PM 16 A. YES.

03:31PM 17 Q. AND INCLUDING SWCWC PROVIDERS AT -- IT'S A MOUTHFUL.

03:31PM 18 SWCWCproviders@swcwc.net.

03:31PM 19 DO YOU SEE THAT?

03:31PM 20 A. YES.

03:31PM 21 Q. AND YOU WERE A PROVIDER AT THE CLINIC AND RECEIVED EMAILS

03:31PM 22 THROUGH THIS GROUP; CORRECT?

03:31PM 23 A. CORRECT.

03:31PM 24 Q. OKAY.

03:31PM 25 YOUR HONOR, WE MOVE TO ADMIT EXHIBIT 20071.

03:31PM 1
03:31PM 2
03:31PM 3
03:31PM 4
03:31PM 5
03:31PM 6
03:31PM 7
03:31PM 8
03:31PM 9
03:31PM 10
03:31PM 11
03:32PM 12
03:32PM 13
03:32PM 14
03:32PM 15
03:32PM 16
03:32PM 17
03:32PM 18
03:32PM 19
03:32PM 20
03:32PM 21
03:32PM 22
03:32PM 23
03:32PM 24
03:32PM 25

MR. BOSTIC: NO OBJECTION.

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

(DEFENDANT'S EXHIBIT 20071 WAS RECEIVED IN EVIDENCE.)

BY MS. MCDOWELL:

Q. OKAY. YOU SEE HERE THE EMAIL THAT I JUST REFERENCED WAS SENT ON OCTOBER 4TH, 2015; RIGHT?

A. YES.

Q. AND THE SUBJECT IS THERANOS ELECTRONIC ORDERS AND RESULTS; CORRECT?

A. CORRECT.

Q. AND MS. RILEY REPORTS, "GOOD MORNING EVERYONE,

"THE BIDIRECTIONAL INTERFACE WITH THERANOS HAS BEEN SET UP. WE ARE NOW ABLE TO SEND LAB ORDERS TO AND RECEIVE RESULTS FROM THERANOS ELECTRONICALLY. THE PROCESS IS THE SAME AS WHAT WE DO FOR SONORAQUEST, PROPATH, AND LABCORP. PLEASE LET ME KNOW IF YOU HAVE ANY QUESTIONS."

DO YOU SEE THAT?

A. I DO.

Q. AND THIS IS AFTER MS. GOULD'S RESULTS; CORRECT?

A. CORRECT.

Q. AND ISN'T IT RIGHT, DR. ZACHMAN, THAT THERE WERE OVER A THOUSAND VISITS TO THERANOS FROM YOUR PATIENT'S CLINICS AFTER MS. GOULD'S RESULTS?

A. I WOULDN'T BE SURPRISED TO HEAR THAT THERE WAS.

Q. OKAY. AND ISN'T IT RIGHT THAT THERE WERE OVER 200 HCG

03:32PM 1 TESTS ORDERED FROM YOUR PATIENT'S CLINICS AFTER MS. GOULD'S
03:32PM 2 RESULTS?

03:32PM 3 A. ALTHOUGH I DON'T KNOW THE NUMBERS, I WOULDN'T BE
03:32PM 4 SURPRISED.

03:32PM 5 Q. AND YOUR PATIENTS ALSO RECEIVED HCG RESULTS FROM THERANOS
03:32PM 6 AFTER MS. GOULD'S RESULTS; CORRECT?

03:33PM 7 A. I'M SURE THAT THEY DID.

03:33PM 8 Q. OKAY. IF YOU COULD LOOK AT EXHIBIT 20073 IN YOUR BINDER.

03:33PM 9 A. YES, I'M HERE. SORRY.

03:33PM 10 Q. THANK YOU. YOU SEE THIS IS A SPREADSHEET; RIGHT?

03:33PM 11 A. YES.

03:33PM 12 Q. AND THERE ARE A LOT OF PAGES HERE, BUT YOU SEE THAT THERE
03:33PM 13 ARE SEVERAL COLUMNS; RIGHT?

03:33PM 14 A. CORRECT.

03:33PM 15 Q. AND THERE ARE ORDER DATES LISTED HERE; RIGHT?

03:33PM 16 A. YES.

03:33PM 17 Q. AND BLOOD TESTS LISTED HERE AS WELL?

03:33PM 18 A. YES.

03:33PM 19 Q. AND WHEN YOU WERE WORKING AT YOUR FORMER CLINIC, YOU GUYS
03:33PM 20 REGULARLY PRESERVED MEDICAL DATA OF YOUR PATIENTS; CORRECT?

03:33PM 21 A. CORRECT.

03:33PM 22 MS. MCDOWELL: YOUR HONOR, WE MOVE TO ADMIT
03:33PM 23 EXHIBIT 20073 BASED ON A STIPULATION OF THE PARTIES.

03:33PM 24 MR. BOSTIC: SO, YOUR HONOR, WE STIPULATE AS TO
03:33PM 25 AUTHENTICITY, BUT IT'S NOT CLEAR, AND I'M NOT SURE WHETHER THIS

03:34PM 1 WITNESS CAN TELL US WHAT WE'RE ACTUALLY LOOKING AT HERE.

03:34PM 2 THE COURT: WELL, THIS NEEDS SOME FOUNDATION.

03:34PM 3 MS. MCDOWELL: OKAY.

03:34PM 4 Q. SO YOU SEE HERE THAT THERE ARE SEVERAL COLUMNS ON THE

03:34PM 5 FIRST PAGE; RIGHT?

03:34PM 6 A. I SEE THAT.

03:34PM 7 Q. AND YOU SEE THAT THERE ARE LAB ORDER NUMBERS FOR YOUR

03:34PM 8 FORMER CLINIC; CORRECT?

03:34PM 9 A. I SEE LAB ORDER NUMBERS, YES.

03:34PM 10 Q. AND YOU SEE ORDERS FOR DIFFERENT BLOOD TESTS; CORRECT?

03:34PM 11 A. I SEE THAT.

03:34PM 12 Q. OKAY. AND IF YOU CAN TURN TO PAGE 23 OF THIS DOCUMENT.

03:34PM 13 YOU SEE THAT THERE'S A LIST OF PROVIDERS -- OH, SORRY.

03:34PM 14 A. SORRY. WHOOPS. I'M THERE. THANK YOU.

03:34PM 15 Q. OKAY. YOU SEE THERE'S A LIST OF PROVIDERS LISTED HERE;

03:34PM 16 CORRECT?

03:34PM 17 A. I SEE THAT, YES.

03:34PM 18 Q. AND DO YOU RECOGNIZE THESE AS YOUR FORMER COLLEAGUES?

03:34PM 19 A. I DO.

03:34PM 20 Q. AND DO YOU SEE YOUR NAME ON THIS AS WELL?

03:34PM 21 A. I SEE IT.

03:34PM 22 Q. AND YOU SEE THAT THERE IS A COLUMN FOR PATIENT PERSON

03:35PM 23 NUMBER; RIGHT?

03:35PM 24 A. I SEE THAT.

03:35PM 25 Q. AND DID YOUR CLINIC REFER TO ITS PATIENTS AS IT PRESERVED

03:35PM 1 ITS RECORD THROUGH A NUMBERING SYSTEM LIKE THIS?

03:35PM 2 A. YES.

03:35PM 3 Q. AND YOU SEE THERE'S A PRACTICE CODE; CORRECT?

03:35PM 4 A. I SEE THAT.

03:35PM 5 Q. AND ARE YOU FAMILIAR WITH THE PRACTICE CODE SWC?

03:35PM 6 A. I WOULD ASSUME IT'S SOUTHWEST WOMEN'S CARE.

03:35PM 7 Q. OKAY. AND YOU SEE THERE'S A FACILITY NAME COLUMN;
03:35PM 8 CORRECT?

03:35PM 9 A. I SEE THAT.

03:35PM 10 Q. AND THE FACILITY NAME IS THERANOS; RIGHT?

03:35PM 11 A. I SEE THAT.

03:35PM 12 Q. OKAY. SO THIS IS A SPREADSHEET REFLECTING YOUR FORMER
03:35PM 13 CLINIC'S PATIENTS WHO VISITED THERANOS; CORRECT?

03:35PM 14 A. THAT'S WHAT IT APPEARS.

03:35PM 15 MS. MCDOWELL: YOUR HONOR, WE MOVE TO ADMIT
03:35PM 16 EXHIBIT 20073.

03:35PM 17 MR. BOSTIC: SO, YOUR HONOR, AGAIN, NO OBJECTION AS
03:35PM 18 TO THE AUTHENTICITY, BUT IT'S STILL NOT CLEAR TO ME THAT THIS
03:35PM 19 WITNESS CAN TELL US EXACTLY WHAT WE'RE LOOKING AT, SO SAME
03:36PM 20 OBJECTION.

03:36PM 21 THE COURT: I THINK THERE'S -- AS TO PAGE 23 ON -- I
03:36PM 22 DON'T SEE ANY DATES. MAYBE YOU CAN GET A FOUNDATION FOR THAT.

03:36PM 23 MS. MCDOWELL: SO ALSO -- I DON'T KNOW IF THERE'S
03:36PM 24 BEEN A MISCOMMUNICATION, BUT MY UNDERSTANDING IS THAT WE HAVE
03:36PM 25 STIPULATED TO AUTHENTICATION AND HEARSAY, BUT IT'S NOT HEARSAY.

03:36PM 1 SO I'M -- I GUESS I'M -- I DON'T KNOW IF WE NEED TO CLEAR
03:36PM 2 THIS UP.

03:36PM 3 MR. BOSTIC: SO, YOUR HONOR, I THINK MAYBE MY
03:36PM 4 OBJECTION IS BETTER FRAMED AS A RELEVANCE OBJECTION.

03:36PM 5 THE COURT: RIGHT.

03:36PM 6 PARDON ME, MR. BOSTIC. THAT WAS THE BASIS, A 401 AS TO
03:36PM 7 THE TIME STAMPING OF THIS.

03:36PM 8 MS. MCDOWELL: OKAY.

03:36PM 9 Q. SO THERE ARE ORDER DATES LISTED HERE, RIGHT, ON --

03:36PM 10 A. BACK AT THE BEGINNING?

03:36PM 11 Q. YES. YOU CAN SEE THAT THERE ARE ORDERS INTO 2015;
03:36PM 12 CORRECT?

03:36PM 13 A. I SEE THAT.

03:36PM 14 Q. OKAY. AND THEN IF YOU COULD TURN TO PAGE 23, YOU SEE
03:37PM 15 THERE ARE ALSO LAB ORDER DATES GOING INTO 2016; RIGHT?

03:37PM 16 A. ON PAGE 22?

03:37PM 17 Q. ON PAGE 22, YES.

03:37PM 18 A. YES, I SEE THAT.

03:37PM 19 Q. OKAY. AND YOU TESTIFIED THAT YOU STOPPED USING THERANOS
03:37PM 20 AFTER MS. GOULD'S RESULTS; CORRECT?

03:37PM 21 A. I DID NOT RECOMMEND THAT PATIENTS GO THERE.

03:37PM 22 Q. BECAUSE YOU HAD CONCERNS ABOUT THE ACTIONS OF THERANOS
03:37PM 23 BLOOD TESTS; RIGHT?

03:37PM 24 A. THAT'S CORRECT.

03:37PM 25 Q. AND THIS SPREADSHEET REFLECTS A LIST OF PATIENTS FROM YOUR

03:37PM 1 FORMER CLINIC THAT CONTINUED USING THERANOS AFTER MS. GOULD'S

03:37PM 2 TEST; CORRECT?

03:37PM 3 A. I SEE THAT, BUT I, I CERTAINLY -- PATIENTS CAN GO WHERE

03:37PM 4 THEY WOULD LIKE TO GET THEIR BLOOD WORK DONE.

03:37PM 5 Q. OKAY. AND YOU SEE ON PAGE 29 OF THIS DOCUMENT, DO YOU SEE

03:37PM 6 YOUR NAME HERE LISTED?

03:37PM 7 A. I DO.

03:37PM 8 Q. AND DO YOU SEE THE LAB FACILITY ASSOCIATED WITH THE ROW

03:38PM 9 THAT HAS YOUR NAME IS LISTED AS THERANOS?

03:38PM 10 A. YES, I SEE THAT.

03:38PM 11 Q. OKAY. AND COULD YOU TURN TO PAGE 36, PLEASE.

03:38PM 12 DO YOU SEE YOUR NAME IS LISTED TWICE HERE ON THIS PAGE?

03:38PM 13 A. I SEE IT.

03:38PM 14 Q. OKAY. AND DO YOU SEE THE LAB FACILITY ASSOCIATED WITH

03:38PM 15 THAT ROW AS THERANOS? DO YOU SEE THAT?

03:38PM 16 A. I SEE IT.

03:38PM 17 Q. OKAY. AND DO YOU SEE THIS IS A LARGE SPREADSHEET; RIGHT?

03:38PM 18 A. I WOULD AGREE.

03:38PM 19 Q. AND IT APPEARS THAT IT'S BEEN SPLIT UP INTO COLUMNS;

03:38PM 20 RIGHT?

03:38PM 21 A. YES.

03:38PM 22 Q. OKAY.

03:38PM 23 SO, YOUR HONOR, WE MOVE TO ADMIT EXHIBIT 20073.

03:38PM 24 I ALSO HAVE A BUSINESS RECORDS DECLARATION FROM SOUTHWEST

03:38PM 25 CONTEMPORARY WOMEN'S CARE THAT I'VE SHARED WITH THE GOVERNMENT,

03:38PM 1 AND I'M HAPPY TO PASS UP TODAY.

03:38PM 2 THE COURT: AS TO PAGES 23 TO 44, THE RELEVANCE

03:39PM 3 OBJECTION IS SUSTAINED UNLESS THERE'S A TIME STAMP AS TO THESE.

03:39PM 4 IF YOUR STIPULATION COVERS THAT TIME STAMP, THAT WOULD FILL

03:39PM 5 THAT VACUUM.

03:39PM 6 MS. MCDOWELL: WELL, CAN I PASS UP THE DECLARATION?

03:39PM 7 THE COURT: SURE.

03:39PM 8 MS. MCDOWELL: THANK YOU.

03:39PM 9 THE COURT: DO YOU HAVE THIS, MR. BOSTIC?

03:39PM 10 MR. BOSTIC: I DO.

03:39PM 11 MS. MCDOWELL: I ACTUALLY HAVE ONE AND ONE FROM

03:39PM 12 YESTERDAY.

03:39PM 13 THE COURT: DO YOU WANT TO BE HEARD ON THE

03:39PM 14 OBJECTION?

03:39PM 15 MR. BOSTIC: THE GOVERNMENT'S OBJECTION IS 401,

03:39PM 16 YOUR HONOR.

03:39PM 17 THE COURT: WHAT WOULD YOU LIKE?

03:39PM 18 MS. MCDOWELL: THE BATE STAMP OF THIS DOCUMENT,

03:39PM 19 YOUR HONOR, BEGINS WITH SWCWC 6 AND PROCEEDS --

03:40PM 20 THE COURT: SO I AM -- PAGE 23 --

03:40PM 21 MS. MCDOWELL: YES.

03:40PM 22 THE COURT: -- ON IS WHAT I'M LOOKING AT. THE BATE

03:40PM 23 STAMP ENDS IN 28.

03:40PM 24 MS. MCDOWELL: RIGHT.

03:40PM 25 SO THIS IS A LARGE EXHIBIT THAT RANGES THE BATE STAMP 6

03:40PM 1 THROUGH 49. SO STARTING ON PAGE 23 ENCOMPASSES PART OF THIS
03:40PM 2 LARGER DOCUMENT. AND THIS DECLARATION HERE COVERS THE BATES
03:40PM 3 RANGES OF THIS SPREADSHEET.

03:40PM 4 THE COURT: SO DOES THIS HAVE THE DATES IN IT, THAT
03:41PM 5 YOU'VE HANDED ME, THE DATES THAT CORRESPOND TO PAGES 23 ONWARD?

03:41PM 6 MS. MCDOWELL: SO, YOUR HONOR, I THINK THE WAY THIS
03:41PM 7 WAS PRODUCED TO US IS IN THIS FASHION.

03:41PM 8 SO IT'S AN EXCEL SPREADSHEET THAT HAS BEEN BROKEN UP.

03:41PM 9 THE COURT: RIGHT.

03:41PM 10 MS. MCDOWELL: SO IT WOULD ALL CONNECT TOGETHER.

03:41PM 11 SO THE DATES ARE ACTUALLY THE ORDER DATES THAT ARE ON
03:41PM 12 PAGES 1 TO 23.

03:41PM 13 THE COURT: OF THE STIPULATION YOU GAVE ME.

03:41PM 14 MS. MCDOWELL: I'M SORRY. PAGES 1 TO 2 THROUGH OF
03:41PM 15 THE EXHIBIT HAS THE DATES, AND IF THIS WAS A NATIVE EXCEL, THE
03:41PM 16 COLUMNS WOULD EXPAND AND SHOW THE REMAINING INFORMATION
03:41PM 17 BEGINNING ON PAGE 23.

03:41PM 18 THE COURT: OH. I SEE. I SEE.

03:42PM 19 MR. BOSTIC.

03:42PM 20 MR. BOSTIC: I'LL STAND ON THE 401 OBJECTION.

03:42PM 21 I THINK ALSO 403, GIVEN THE FORMAT OF THIS DOCUMENT, GIVEN
03:42PM 22 THAT IT'S DIFFICULT OR IMPOSSIBLE TO IDENTIFY THE DATES FOR
03:42PM 23 MANY OF THESE ROWS AND GIVEN THAT I DON'T THINK THIS WITNESS
03:42PM 24 CAN TELL US HOW THIS WAS GENERATED. I THINK 401 AND 403.

03:42PM 25 THE COURT: YOU KNOW, IF YOU COULD GET A DIFFERENT

03:42PM 1 EXHIBIT. I DO THINK IT'S -- I CAN'T TRACK WHERE THIS IS. I
03:42PM 2 APPRECIATE THAT IT'S AN EXCEL SHEET THAT HAS BEEN -- IT SEEMS
03:42PM 3 LIKE IT'S BEEN SEPARATED OR SPLIT UP SOMEHOW, AND MAYBE THE
03:42PM 4 WITNESS CAN LAY A FOUNDATION FOR THE EXCEL SHEET. IF SHE CAN,
03:42PM 5 THAT'S ONE THING.

03:42PM 6 BEFORE I'LL ADMIT IT, I THINK IT NEEDS TO BE PUT TOGETHER
03:43PM 7 IN A MORE WHOLESOME AND FULSOME FASHION.

03:43PM 8 MS. MCDOWELL: OKAY. UNDERSTOOD, YOUR HONOR.

03:43PM 9 THE COURT: SO I'LL SUSTAIN THE OBJECTION AS TO
03:43PM 10 THESE PAGES.

03:43PM 11 BY MS. MCDOWELL:

03:43PM 12 Q. SO YOU TESTIFIED, DR. ZACHMAN, THAT YOU STOPPED
03:43PM 13 RECOMMENDING YOUR PATIENTS TO THERANOS AFTER MS. GOULD'S TESTS;
03:43PM 14 RIGHT?

03:43PM 15 A. CORRECT.

03:43PM 16 Q. BUT YOU DID HAVE PATIENTS THAT IN FACT VISITED THERANOS
03:43PM 17 AFTER MS. GOULD'S TESTS; CORRECT?

03:43PM 18 A. CORRECT.

03:43PM 19 Q. AND YOU COULD HAVE TOLD YOUR PATIENTS NOT TO USE THERANOS;
03:43PM 20 RIGHT?

03:43PM 21 A. I DID.

03:43PM 22 Q. BUT YOUR PATIENTS DID, IN FACT, USE THERANOS; RIGHT?

03:43PM 23 A. YES.

03:43PM 24 Q. AND THOUSANDS OF PATIENTS FROM YOUR CLINIC USED THERANOS
03:43PM 25 AS WELL; RIGHT?

03:43PM 1 A. I DON'T KNOW HOW MANY DID.

03:43PM 2 Q. BUT A LARGE NUMBER FROM YOUR CLINIC USED THERANOS;

03:43PM 3 CORRECT?

03:43PM 4 A. I WOULD THINK.

03:44PM 5 Q. SO THERE CAME A TIME, DR. ZACHMAN, THAT THE GOVERNMENT

03:44PM 6 MADE A REQUEST OF YOU; RIGHT?

03:44PM 7 A. CORRECT.

03:44PM 8 Q. AND THEY REQUESTED THAT YOU LOOK THROUGH ALL OF YOUR

03:44PM 9 PATIENT FILES; RIGHT?

03:44PM 10 A. CORRECT.

03:44PM 11 Q. AND TRY TO LOCATE ANY OTHER THERANOS RESULTS THAT YOU FELT

03:44PM 12 WERE INACCURATE; RIGHT?

03:44PM 13 A. CORRECT.

03:44PM 14 Q. AND YOU COMPLIED WITH THAT REQUEST; CORRECT?

03:44PM 15 A. CORRECT. BUT TO BE A LITTLE MORE SPECIFIC, IT WAS FOR

03:44PM 16 HCG'S.

03:44PM 17 Q. OKAY.

03:44PM 18 A. YEAH.

03:44PM 19 Q. SO YOU SEARCHED YOUR PATIENT FILES FOR THERANOS RESULTS OF

03:44PM 20 HCG TESTS; RIGHT?

03:44PM 21 A. CORRECT.

03:44PM 22 Q. OKAY. AND YOU CONDUCTED THE SEARCH; RIGHT?

03:44PM 23 A. I DID.

03:44PM 24 Q. AND IT WAS THOROUGH; CORRECT?

03:44PM 25 A. CORRECT.

03:44PM 1 Q. AND YOU TOOK THE GOVERNMENT'S REQUEST SERIOUSLY; RIGHT?

03:44PM 2 A. I DID.

03:44PM 3 Q. AND AFTER CONDUCTING THAT SEARCH, YOU REPORTED THAT YOU
03:44PM 4 DID NOT FIND MUCH THAT WAS OUT OF PLACE; CORRECT?

03:44PM 5 A. CORRECT.

03:44PM 6 Q. COULD YOU TURN TO EXHIBIT 20074 IN YOUR BINDER.

03:45PM 7 DO YOU SEE THIS IS AN EMAIL FROM YOU IN JANUARY OF 2021?

03:45PM 8 A. ON THE BACK SIDE I THINK?

03:45PM 9 Q. YES.

03:45PM 10 A. YES.

03:45PM 11 Q. AND DO YOU SEE THAT THIS WAS SENT TO GEORGE SCAVDIS?

03:45PM 12 A. I SEE THAT.

03:45PM 13 Q. OKAY. AND YOU UNDERSTAND HE WORKS FOR THE GOVERNMENT;
03:45PM 14 RIGHT?

03:45PM 15 A. I DO.

03:45PM 16 MS. MCDOWELL: YOUR HONOR, WE MOVE TO ADMIT
03:45PM 17 EXHIBIT 20074.

03:45PM 18 MR. BOSTIC: NO OBJECTION.

03:45PM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:45PM 20 (DEFENDANT'S EXHIBIT 20074 WAS RECEIVED IN EVIDENCE.)

03:45PM 21 BY MS. MCDOWELL:

03:45PM 22 Q. SO, DR. ZACHMAN, YOU SEE AN EMAIL FROM YOU ON JANUARY 5TH,
03:45PM 23 2021; RIGHT?

03:45PM 24 A. YES, I SEE THAT.

03:45PM 25 Q. AND YOU HAVE REPORTED, "I HAVE REVIEWED ALL OF THE CHARTS

03:45PM 1 AND DID NOT COME UP WITH MUCH THAT SEEMED OUT OF PLACE. I WILL

03:45PM 2 RUN A COUPLE BY DR. LINNERSON TOMORROW TO BE SURE HE AGREES."

03:46PM 3 DO YOU SEE THAT?

03:46PM 4 A. YES.

03:46PM 5 Q. AND THEN IF WE COULD LOOK UP, YOU RESPONDED AGAIN ON

03:46PM 6 JANUARY 8TH, 2021; RIGHT?

03:46PM 7 A. YES.

03:46PM 8 Q. AND THE SUBJECT LINE IS THERANOS; CORRECT?

03:46PM 9 A. CORRECT.

03:46PM 10 Q. AND YOU WROTE, "AFTER A THOROUGH REVIEW, IT HAS BEEN

03:46PM 11 DETERMINED THAT THERE WERE NOT ANY QUANT RESULTS THAT, IF IN

03:46PM 12 QUESTION, MADE ANY CLINICAL DIFFERENCE."

03:46PM 13 DO YOU SEE THAT?

03:46PM 14 A. I DO.

03:46PM 15 Q. "THE CASE WITH B.G.," AND THAT'S MS. GOULD; CORRECT?

03:46PM 16 A. CORRECT.

03:46PM 17 Q. "AND HER INTERACTION WITH ME IS THE ONLY CIRCUMSTANCE THAT

03:46PM 18 HAD QUANT VALUES THAT WERE OVERTLY ABNORMAL AND MADE A

03:46PM 19 DIFFERENCE TO HER CARE."

03:46PM 20 DO YOU SEE THAT?

03:46PM 21 A. I DO.

03:46PM 22 Q. AND YOU APOLOGIZE THAT YOU DID NOT HAVE MORE TO REPORT;

03:46PM 23 CORRECT?

03:46PM 24 A. CORRECT.

03:46PM 25 MS. MCDOWELL: YOUR HONOR, MAY I HAVE A MOMENT?

03:46PM 1 THE COURT: YES.

03:46PM 2 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

03:47PM 3 MS. MCDOWELL: NO FURTHER QUESTIONS.

03:47PM 4 MR. BOSTIC: BRIEFLY, YOUR HONOR.

03:47PM 5 **REDIRECT EXAMINATION**

03:47PM 6 BY MR. BOSTIC:

03:47PM 7 Q. HELLO, DR. ZACHMAN.

03:47PM 8 A. HELLO.

03:47PM 9 Q. LET ME ASK YOU JUST A FEW QUESTIONS ABOUT THE TOPICS YOU
03:48PM 10 DISCUSSED ON REDIRECT OR ON CROSS.

03:48PM 11 FIRST OF ALL, STARTING WITH THE EMAIL THAT YOU WERE JUST
03:48PM 12 LOOKING AT WHERE YOU REPORTED BACK TO AN INVESTIGATOR FOR THE
03:48PM 13 GOVERNMENT THAT MS. GOULD'S RESULTS WERE THE ONLY CIRCUMSTANCE
03:48PM 14 THAT HAD QUANT VALUES THAT WERE OVERTLY ABNORMAL AND MADE A
03:48PM 15 DIFFERENCE TO HER CARE.

03:48PM 16 CAN YOU EXPLAIN WHAT YOU MEANT BY THOSE TWO THINGS?

03:48PM 17 A. SURE.

03:48PM 18 THERE WERE SOME VALUES IN REVIEW OR IN ANY CLINICAL
03:48PM 19 SETTING OF A QUANT THAT COULD BE A COUPLE POINTS HIGHER OR A
03:48PM 20 COUPLE POINTS LOWER, BUT HER VALUES WERE EXTREMELY OUT OF A
03:48PM 21 RANGE THAT WAS ANTICIPATED, AND IT MADE A DIFFERENCE TO HER
03:48PM 22 CLINICAL CARE AS I REPORTED TO HER WHEN IT DROPPED TO 125 THAT
03:49PM 23 I WAS SUSPECTING THAT SHE HAD LOST THE PREGNANCY.

03:49PM 24 Q. AND AFTER LOOKING AT RECORDS AT YOUR PRACTICE, YOU DIDN'T
03:49PM 25 SEE ANY OTHER INSTANCES WHERE THOSE THINGS WERE TRUE INVOLVING

03:49PM 1 A THERANOS RESULT; IS THAT CORRECT?

03:49PM 2 A. CORRECT.

03:49PM 3 Q. AND IS THAT WHAT YOU WERE REPORTING TO THE GOVERNMENT?

03:49PM 4 A. YES.

03:49PM 5 Q. YOU WERE ALSO ASKED ABOUT WHETHER PATIENTS OF YOUR
03:49PM 6 PRACTICE CONTINUED TO USE THERANOS AFTER YOUR EXPERIENCE WITH
03:49PM 7 MS. GOULD'S RESULTS.

03:49PM 8 DO YOU REMEMBER THAT?

03:49PM 9 A. YES.

03:49PM 10 Q. AFTER YOU MADE THE DECISION NOT TO SEND YOUR PATIENTS TO
03:49PM 11 THERANOS ANYMORE, WAS THERE ANYTHING YOU COULD DO TO STOP YOUR
03:49PM 12 PATIENTS FROM USING THERANOS, FORCE THEM NOT TO USE IT?

03:49PM 13 A. NO.

03:49PM 14 Q. YOU TESTIFIED THAT YOU WOULD SAY SOMETHING TO PATIENTS
03:49PM 15 WHEN THEY CHOSE TO GO TO THERANOS AFTER YOUR PROBLEMS WITH
03:49PM 16 MS. GOULD'S RESULTS; IS THAT RIGHT?

03:49PM 17 A. I VOICED CONCERN, YES.

03:49PM 18 Q. WHAT KINDS OF THINGS WOULD YOU SAY TO THEM?

03:49PM 19 A. THAT I HAD HAD AN EXPERIENCE THAT HAS LED ME TO QUESTION
03:50PM 20 THE VALIDITY OF THE RESULTS THAT I WOULD SEE.

03:50PM 21 Q. ON THE CHART THAT YOU WERE SHOWN ON CROSS-EXAMINATION, DID
03:50PM 22 YOU SEE THAT HCG TESTING CONTINUED THROUGH A LARGE PART OF
03:50PM 23 2015?

03:50PM 24 A. YES.

03:50PM 25 MR. BOSTIC: YOUR HONOR, EXHIBIT 4533 HAS ALREADY

03:50PM 1 BEEN ADMITTED. MAY WE PUBLISH?

03:50PM 2 THE COURT: YES.

03:50PM 3 BY MR. BOSTIC:

03:50PM 4 Q. DR. ZACHMAN, HAVE YOU SEEN THIS DOCUMENT BEFORE?

03:50PM 5 A. I SAW IT YESTERDAY.

03:50PM 6 Q. YESTERDAY FOR THE FIRST TIME?

03:50PM 7 A. YES, FOR THE FIRST TIME.

03:50PM 8 Q. OKAY. IF I COULD DRAW YOUR ATTENTION TO THE TABLE AT THE
03:50PM 9 BOTTOM OF THIS DOCUMENT.

03:50PM 10 DO YOU SEE THERE THERE'S A LIST OF THERANOS ASSAYS AND THE
03:50PM 11 DATES ON WHICH THEY WERE RUN?

03:50PM 12 A. YES, I SEE THAT.

03:50PM 13 Q. AND DO YOU SEE THAT THIS CHART INDICATES THAT THERANOS
03:50PM 14 STOPPED RUNNING THE HCG ON ITS EDISON DEVICE IN JANUARY OF
03:51PM 15 2015?

03:51PM 16 DO YOU SEE THAT DATE?

03:51PM 17 A. YES, I SEE THAT.

03:51PM 18 Q. WE CAN SET THAT ASIDE.

03:51PM 19 DURING YOUR CONVERSATIONS WITH THERANOS, WERE YOU EVER
03:51PM 20 TOLD AT ANY TIME THAT THERANOS'S LAB DIRECTOR MADE THE DECISION
03:51PM 21 TO HALT ALL HCG TESTING ON THE COMPANY'S EDISON DEVICE IN MAY
03:51PM 22 OF 2014?

03:51PM 23 A. NO.

03:51PM 24 MR. BOSTIC: YOUR HONOR, PERMISSION TO PUBLISH
03:51PM 25 EXHIBIT 4520, WHICH IS ALREADY IN EVIDENCE?

03:51PM 1 THE COURT: YES.

03:51PM 2 BY MR. BOSTIC:

03:51PM 3 Q. DURING YOUR CONVERSATIONS WITH THERANOS, DID ANYONE FROM
03:51PM 4 THE COMPANY TELL YOU THAT THE COMPANY HAD EXPERIENCED OTHER
03:51PM 5 PROBLEMS WITH HCG TESTING ORDERED BY OTHER DOCTORS?

03:51PM 6 A. NO.

03:51PM 7 Q. IF WE COULD LOOK AT PAGE 15 OF THIS EXHIBIT.

03:52PM 8 AND IN THE MIDDLE OF THE PAGE THERE'S AN ENTRY FROM
03:52PM 9 AUGUST 14TH, 2014.

03:52PM 10 AND MAYBE, MS. WACHS, IF WE CAN JUST ZOOM IN ON THE
03:52PM 11 LEFT-SIDE COLUMN SO WE CAN GET A LITTLE BIGGER. PERFECT.
03:52PM 12 THANK YOU.

03:52PM 13 DO YOU SEE THE SECOND ITEM IN THIS TABLE LISTS A REPORT
03:52PM 14 WHERE A PATIENT WAS DRAWN IN JULY OF 2014 AND THERE WAS SOME
03:52PM 15 ISSUES RELATING TO THE VALIDITY OF THE HCG RESULTS?

03:52PM 16 A. I SEE THE DATE THERE. I SEE THAT THERE'S QUESTION ABOUT
03:52PM 17 THE VALUE.

03:52PM 18 Q. AND DO YOU SEE THAT IT WAS REPORTED THAT THOSE RESULTS LED
03:52PM 19 SOMEONE TO CONCLUDE THAT THE PATIENT WAS LIKELY MISCARRYING,
03:52PM 20 BUT IT WAS NOT COMMUNICATED WITH THE PATIENT?

03:53PM 21 A. I SEE THAT.

03:53PM 22 Q. AND DO YOU SEE THAT AFTER THE RESULTS INDICATING A
03:53PM 23 MISCARRYING, THERE WAS A THIRD DRAW AT SONORAQUEST, A
03:53PM 24 NON-THERANOS LAB, WHICH RETURNED A MUCH HIGHER HCG RESULT.

03:53PM 25 DO YOU SEE THAT?

03:53PM 1 A. YES.

03:53PM 2 Q. WAS THAT THE SAME EXPERIENCE THAT YOU HAD WITH MS. GOULD?

03:53PM 3 A. YES.

03:53PM 4 Q. LET'S GO TO PAGE 17 ON THIS CHART.

03:53PM 5 IN THE MIDDLE OF THAT PAGE THERE'S AN ENTRY FROM

03:53PM 6 AUGUST 28TH, 2014.

03:53PM 7 DO YOU SEE HERE THAT IN AUGUST IT'S REPORTED THAT THE

03:53PM 8 PATIENT WENT IN FOR HCG AND CAME OUT WITH A VALUE OF 600,000

03:53PM 9 BUT THEN 2 DAYS LATER CAME BACK AT A LEVEL OF 3,000?

03:53PM 10 A. YES, I SEE THAT.

03:53PM 11 Q. AND THEN YOU SEE THAT SAME PATIENT WENT TO A NON-THERANOS

03:53PM 12 LAB AFTER THERANOS AND THE NUMBER JUMPED BACK UP TO 50,000?

03:53PM 13 A. I SEE THAT.

03:53PM 14 Q. DOES THAT ALSO REMIND YOU OF THE RESULTS THAT YOU SAW WITH

03:54PM 15 MS. GOULD, YOUR PATIENT?

03:54PM 16 A. IT DOES.

03:54PM 17 Q. LET'S GO TO PAGE 20 NEXT.

03:54PM 18 AND THERE, THERE ARE ENTRIES ON SEPTEMBER 26TH AND 28TH OF

03:54PM 19 2014.

03:54PM 20 AND DO YOU SEE THAT THERE ON THE RIGHT SIDE IN THE LOWER

03:54PM 21 RIGHT THERE ARE MORE REPORTS ABOUT COMPLAINTS THAT THERANOS

03:54PM 22 RECEIVED IN SEPTEMBER OF 2014 ABOUT ITS HCG RESULTS?

03:54PM 23 A. I SEE THAT.

03:54PM 24 Q. AGAIN, DID ANYONE AT THERANOS TELL YOU AT ANY TIME ABOUT

03:54PM 25 THE PROBLEMS THAT THERANOS WAS EXPERIENCING WITH ITS HCG

03:54PM 1 TESTING?

03:54PM 2 A. NO.

03:54PM 3 Q. THANK YOU.

03:55PM 4 NO FURTHER QUESTIONS.

03:55PM 5 MS. MCDOWELL: BRIEFLY, YOUR HONOR.

03:55PM 6 **RECROSS-EXAMINATION**

03:55PM 7 BY MS. MCDOWELL:

03:55PM 8 Q. DR. ZACHMAN, YOU WERE ASKED IF YOU WERE AWARE THAT
03:55PM 9 THERANOS HAD HALTED THE USE OF THE EDISON FOR THE HCG RESULT IN
03:55PM 10 2014.

03:55PM 11 DO YOU RECALL THAT?

03:55PM 12 A. I RECALL THAT QUESTION.

03:55PM 13 Q. AND WERE YOU AWARE THAT THERANOS'S LAB DIRECTOR ALLOWED
03:55PM 14 HCG TO GO BACK ON THE EDISON IN JUNE OF 2014? ARE YOU AWARE OF
03:55PM 15 THAT?

03:55PM 16 A. NO.

03:55PM 17 MR. BOSTIC: OBJECTION. MISSTATES THE EVIDENCE.

03:55PM 18 THE COURT: I THINK YOU SHOULD LAY A BETTER
03:55PM 19 FOUNDATION FOR THAT QUESTION. I'LL SUSTAIN THE QUESTION AS
03:55PM 20 IT'S ASKED.

03:55PM 21 BY MS. MCDOWELL:

03:55PM 22 Q. ARE YOU AWARE THAT THE LAB DIRECTOR, THERANOS'S LAB
03:55PM 23 DIRECTOR WOULD BE THE PERSON THAT WOULD MAKE A DECISION AS TO
03:55PM 24 WHETHER TO BRING THE EDISON BACK ONLINE FOR HCG TESTING? ARE
03:55PM 25 YOU AWARE OF THAT?

03:55PM 1 A. I AM NOT AWARE OF THAT.

03:56PM 2 Q. OKAY.

03:56PM 3 NO FURTHER QUESTIONS, YOUR HONOR.

03:56PM 4 THE COURT: ANYTHING FURTHER, MR. BOSTIC?

03:56PM 5 MR. BOSTIC: NO, YOUR HONOR.

03:56PM 6 THE COURT: MAY THIS WITNESS BE EXCUSED?

03:56PM 7 MR. BOSTIC: YES, YOUR HONOR.

03:56PM 8 THE COURT: MS. MCDOWELL.

03:56PM 9 MS. MCDOWELL: YES, YOUR HONOR.

03:56PM 10 THE COURT: YOU MAY BE EXCUSED.

03:56PM 11 DOES THE GOVERNMENT HAVE ANOTHER WITNESS?

03:56PM 12 MR. LEACH: WE DO, YOUR HONOR. I NOTE THE TIME.

03:56PM 13 THE COURT: I THINK WE CAN -- LADIES AND GENTLEMEN,

03:56PM 14 I HAVE -- WE HAVE -- THERE'S ONE LAST WITNESS THAT IS HERE

03:56PM 15 TODAY.

03:56PM 16 I'VE TALKED TO COUNSEL EARLIER, AND I THINK THAT THE

03:56PM 17 TOTALITY OF THIS TESTIMONY IS GOING TO BE 30 MINUTES.

03:56PM 18 IS THAT ACCURATE?

03:56PM 19 MR. LEACH: I THINK THE GOVERNMENT'S DIRECT IS

03:56PM 20 APPROXIMATELY 15 MINUTES AT THE MOST, YOUR HONOR. I JUST DON'T

03:56PM 21 WANT TO BE KEEPING THE JURY FROM THE WEEKEND.

03:56PM 22 MS. MCDOWELL: SIMILAR SENTIMENTS. I THINK THE

03:56PM 23 CROSS WILL BE BRIEF.

03:56PM 24 THE COURT: OKAY. LADIES AND GENTLEMEN, IF I COULD

03:56PM 25 IMPOSE ON YOU.

03:56PM 1 I'D LIKE TO FINISH THIS WITNESS'S TESTIMONY TODAY IF WE
03:57PM 2 COULD SO WE DON'T HAVE TO HAVE THIS WITNESS COME BACK MONDAY.
03:57PM 3 IT WOULD BE ABOUT 30 MINUTES. YOU JUST HEARD THESE
03:57PM 4 LAWYERS.
03:57PM 5 SO I'M GOING TO ALLOW THE GOVERNMENT TO CALL THIS WITNESS
03:57PM 6 NOW, AND WE'LL GET STARTED.
03:57PM 7 THANK YOU, MR. LEACH.
03:57PM 8 WHO DO YOU CALL?
03:57PM 9 MR. LEACH: THE GOVERNMENT CALLS BRITTANY GOULD.
03:57PM 10 THE COURT: THANK YOU.
03:57PM 11 GOOD AFTERNOON. IF YOU WOULD COME FORWARD AND FACE OUR
03:57PM 12 COURTROOM DEPUTY AND RAISE YOUR RIGHT HAND. SHE HAS A QUESTION
03:57PM 13 FOR YOU.
03:57PM 14 **(GOVERNMENT'S WITNESS, BRITTANY GOULD, WAS SWORN.)**
03:57PM 15 THE WITNESS: YES.
03:58PM 16 THE COURT: PLEASE HAVE A SEAT UP HERE.
03:58PM 17 MAKE YOURSELF COMFORTABLE. ADJUST THE CHAIR AND
03:58PM 18 MICROPHONE AS YOU NEED.
03:58PM 19 THE WITNESS: OKAY.
03:58PM 20 THE COURT: AND THERE'S WATER THERE FOR REFRESHMENT
03:58PM 21 SHOULD YOU WISH.
03:58PM 22 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
03:58PM 23 AND THEN SPELL IT, PLEASE.
03:58PM 24 THE WITNESS: BRITTANY GOULD, B-R-I-T-T-A-N-Y,
03:58PM 25 G-O-U-L-D.

03:58PM 1 THE COURT: THANK YOU.

03:58PM 2 COUNSEL.

03:58PM 3 MR. LEACH: THANK YOU, YOUR HONOR.

03:58PM 4 **DIRECT EXAMINATION**

03:58PM 5 BY MR. LEACH:

03:58PM 6 Q. MS. GOULD, IF YOU'RE FULLY VACCINATED AND COMFORTABLE, YOU
03:58PM 7 HAVE THE COURT'S PERMISSION TO TESTIFY WITHOUT YOUR MASK.

03:58PM 8 A. OKAY. THANK YOU.

03:58PM 9 Q. YOU'RE WELCOME. WHERE DO YOU LIVE, MS. GOULD?

03:58PM 10 A. I LIVE IN ARIZONA.

03:58PM 11 Q. HOW LONG HAVE YOU LIVED IN ARIZONA?

03:58PM 12 A. APPROXIMATELY 19 YEARS.

03:58PM 13 Q. AND WHAT DO YOU DO FOR A LIVING?

03:58PM 14 A. I'M IN THE MEDICAL FIELD. I'M A MEDICAL ASSISTANT.

03:58PM 15 Q. AND WHAT ARE YOUR JOB DUTIES AS A MEDICAL ASSISTANT?

03:58PM 16 A. DRAWING BLOOD FOR PATIENTS, COMMUNICATING TEST RESULTS,
03:58PM 17 ESCORTING THEM BACK TO THEIR PATIENT ROOMS, AND BEING THE
03:58PM 18 LIAISON BETWEEN THE DOCTOR AND THE PATIENT.

03:59PM 19 Q. WOULD YOU MIND PULLING YOUR MICROPHONE A LITTLE BIT
03:59PM 20 CLOSER. I WANT TO MAKE SURE EVERYBODY CAN HEAR YOU.

03:59PM 21 A. YES. BETTER?

03:59PM 22 Q. OKAY. PERFECT.

03:59PM 23 WHAT TYPES OF PRACTICES HAVE YOU WORKED IN AS A MEDICAL
03:59PM 24 ASSISTANT?

03:59PM 25 A. PRIMARY CARE. I'VE DONE NEUROSURGERY AS WELL AS

03:59PM 1 GASTROENTEROLOGY.

03:59PM 2 Q. SO PRIMARY CARE?

03:59PM 3 A. UH-HUH.

03:59PM 4 Q. AND WHAT DOES THAT INVOLVE?

03:59PM 5 A. JUST GENERAL PRACTICE, FAMILY CARE. SO WE SEE ALL AGES.

03:59PM 6 Q. I WANT TO DRAW YOUR ATTENTION TO THE TIME PERIOD 2014.

03:59PM 7 DO YOU HAVE THAT TIME PERIOD IN MIND?

03:59PM 8 A. YES.

03:59PM 9 Q. AND WHERE WERE YOU WORKING AT THAT TIME?

03:59PM 10 A. I WAS WORKING FOR A DOCTOR, DR. CYNTHIA BARRY.

03:59PM 11 Q. OKAY. AND WHAT DID YOU DO FOR DR. BARRY?

03:59PM 12 A. SHE WAS A PRIMARY CARE PHYSICIAN. SO AT HER OFFICE, I

03:59PM 13 WOULD DRAW BLOOD, AND ESCORT THE PATIENTS TO THEIR EXAM ROOMS,

03:59PM 14 AND THINGS OF THAT SORT.

03:59PM 15 Q. OKAY. SO YOU HAD EXPERIENCE DRAWING BLOOD FROM PATIENTS?

03:59PM 16 A. YES, UH-HUH.

03:59PM 17 THE COURT: IS THAT YES?

03:59PM 18 THE WITNESS: YES.

03:59PM 19 MR. LEACH: THANK YOU, YOUR HONOR.

03:59PM 20 Q. IN OR AROUND THIS TIME, DID YOU BECOME FAMILIAR WITH A

03:59PM 21 COMPANY CALLED THERANOS?

03:59PM 22 A. YES.

03:59PM 23 Q. AND HOW DID YOU BECOME FAMILIAR WITH THERANOS?

03:59PM 24 A. WE HAD A REPRESENTATIVE COME INTO DR. BARRY'S OFFICE WITH

04:00PM 25 INFORMATION REGARDING THEIR LAB.

04:00PM 1 Q. WHAT TYPES OF INFORMATION DID THE REPRESENTATIVE BRING IN?

04:00PM 2 A. THEY BROUGHT US A LIST OF PRICES AND LOCATIONS, THINGS OF

04:00PM 3 THAT SORT.

04:00PM 4 Q. OKAY. DID THE BROCHURES ALSO TALK ABOUT HOW THERANOS

04:00PM 5 WOULD DRAW BLOOD?

04:00PM 6 A. YES.

04:00PM 7 Q. AND WHAT DO YOU REMEMBER?

04:00PM 8 A. IT WAS A FINGER POKE.

04:00PM 9 Q. OKAY. AND WAS THAT IMPRESSIVE TO YOU?

04:00PM 10 A. YES.

04:00PM 11 Q. AND WHY WAS THAT IMPRESSIVE TO YOU?

04:00PM 12 A. LESS INVASIVE FORM OF DRAWING BLOOD.

04:00PM 13 Q. WERE YOU IMPRESSED BY THE COST?

04:00PM 14 A. YES.

04:00PM 15 Q. AND WERE YOU IMPRESSED BY THE CONVENIENCE OF THE

04:00PM 16 LOCATIONS?

04:00PM 17 A. YES.

04:00PM 18 Q. OKAY. IN OR AROUND THIS TIME, DID YOU START TO RECOMMEND

04:00PM 19 THERANOS TO SOME OF YOUR PATIENTS?

04:00PM 20 A. YES, CORRECT.

04:00PM 21 Q. AND WHAT WOULD YOU TELL THEM?

04:00PM 22 A. WE WOULD JUST OFFER THEM THAT LAB AS AN ALTERNATIVE AND IT

04:00PM 23 WAS AT THE PATIENT'S DISCRETION, BUT WE DID OFFER THAT.

04:00PM 24 Q. OKAY. AND YOU WERE EXCITED ABOUT THE WAY THERANOS DREW

04:00PM 25 BLOOD?

04:00PM 1 A. CORRECT.

04:00PM 2 Q. OKAY. IN THIS SAME TIME PERIOD, 2014, DID YOU ALSO SEEK

04:01PM 3 MEDICAL CARE FROM SOMEONE NAMED DR. ZACHMAN?

04:01PM 4 A. YES.

04:01PM 5 Q. OKAY. AND DID YOU -- IN THIS TIME PERIOD, WERE YOU AND

04:01PM 6 YOUR HUSBAND TRYING TO HAVE A BABY?

04:01PM 7 A. YES.

04:01PM 8 Q. AND HAD CONCEIVING CHILDREN BEEN EASY FOR YOU?

04:01PM 9 A. NO.

04:01PM 10 Q. AND IN THE FALL OF 2014, DID YOU LEARN THAT YOU WERE

04:01PM 11 EXPECTING?

04:01PM 12 A. YES.

04:01PM 13 Q. HOW DID YOU LEARN THAT YOU WERE EXPECTING?

04:01PM 14 A. INITIALLY IT WAS AN AT-HOME PREGNANCY TEST.

04:01PM 15 Q. AN AT-HOME TEST THAT YOU BOUGHT OFF THE SHELF?

04:01PM 16 A. CORRECT.

04:01PM 17 Q. AND DID YOU GO IN TO SEE DR. ZACHMAN?

04:01PM 18 A. CORRECT.

04:01PM 19 Q. AND WAS DR. ZACHMAN FAMILIAR WITH YOUR, YOUR MEDICAL

04:01PM 20 HISTORY?

04:01PM 21 A. YES.

04:01PM 22 Q. WAS SHE FAMILIAR WITH SOME OF THE DIFFICULTIES THAT YOU

04:01PM 23 HAD CONCEIVING CHILDREN?

04:01PM 24 A. YES.

04:01PM 25 Q. LET ME DRAW YOUR ATTENTION TO WHAT IS IN EVIDENCE AS

04:01PM 1 EXHIBIT 5410.

04:02PM 2 PERMISSION TO DISPLAY, YOUR HONOR?

04:02PM 3 THE COURT: YES.

04:02PM 4 BY MR. LEACH:

04:02PM 5 Q. MS. GOULD, ARE YOU ABLE TO SEE THAT ON THE SCREEN?

04:02PM 6 A. YES.

04:02PM 7 Q. AND DO YOU SEE YOUR NAME IN THE LEFT CORNER?

04:02PM 8 A. YES.

04:02PM 9 Q. AND DO YOU SEE A REFERENCE TO SOUTHWEST CONTEMPORARY

04:02PM 10 WOMEN'S CARE IN THE LEFT CORNER?

04:02PM 11 A. YES.

04:02PM 12 Q. AND DO YOU SEE THE DATE DRAWN? AND DO THESE APPEAR TO BE

04:02PM 13 LAB RESULTS RELATING TO YOUR PREGNANCY IN 2014?

04:02PM 14 A. YES. CORRECT.

04:02PM 15 Q. AND THERE'S A DATE DRAWN OF SEPTEMBER 30TH, 2014.

04:02PM 16 DO YOU SEE THAT?

04:02PM 17 A. YES.

04:02PM 18 Q. AND FURTHER BELOW THERE'S A VALUE FOR SOMETHING CALLED HCG

04:02PM 19 QUANTITATIVE.

04:02PM 20 DO YOU SEE THAT?

04:02PM 21 A. YES.

04:02PM 22 Q. WERE YOU FAMILIAR WITH THE TERM HCG?

04:02PM 23 A. YES.

04:02PM 24 Q. AND THAT WAS A -- WHAT DID YOU UNDERSTAND HCG TO BE?

04:02PM 25 A. IT'S A HORMONE THAT IS PRESENT DURING PREGNANCY THAT GOES

04:02PM 1 HIGHER DURING PREGNANCY.

04:02PM 2 Q. OKAY. SO YOU UNDERSTOOD AT THE TIME THAT YOU WANTED TO

04:02PM 3 SEE YOUR NUMBERS GOING UP --

04:02PM 4 A. CORRECT.

04:02PM 5 Q. -- WITH RESPECT TO -- WE NEED TO SPEAK ONE AT A TIME TO

04:02PM 6 MAKE SURE THE COURT REPORTER GETS IT DOWN.

04:03PM 7 SO MY QUESTION IS THAT YOU WANTED TO MAKE SURE THAT YOU

04:03PM 8 SEE NUMBERS GOING UP OVER TIME?

04:03PM 9 A. YES.

04:03PM 10 Q. AND WAS THE HCG NUMBER IMPORTANT TO YOU?

04:03PM 11 A. YES.

04:03PM 12 Q. HOW SO?

04:03PM 13 A. I WOULD EXPECT TO SEE THAT NUMBER DOUBLING EVERY 48 HOURS

04:03PM 14 IN A HEALTHY PREGNANCY.

04:03PM 15 Q. OKAY. AND IN OR AROUND THE TIME PERIOD SEPTEMBER 30TH,

04:03PM 16 2014, DID YOU MEET WITH DR. ZACHMAN ABOUT YOUR PREGNANCY?

04:03PM 17 A. YES.

04:03PM 18 Q. AND DID SHE CONVEY TO YOU THIS HCG NUMBER OF ABOUT A

04:03PM 19 THOUSAND?

04:03PM 20 A. YES.

04:03PM 21 Q. AND WAS THAT GOOD NEWS?

04:03PM 22 A. YES.

04:03PM 23 Q. OKAY. DID SHE ALSO RECOMMEND THAT YOU SEEK FURTHER HCG

04:03PM 24 TESTING?

04:03PM 25 A. YES.

04:03PM 1 Q. AND WAS THAT BASICALLY EVERY TWO DAYS?

04:03PM 2 A. CORRECT. APPROXIMATELY.

04:03PM 3 Q. OKAY. LET ME DRAW YOUR ATTENTION TO WHAT HAS BEEN MARKED

04:03PM 4 AS EXHIBIT 2444.

04:03PM 5 PERMISSION TO PUBLISH, YOUR HONOR?

04:03PM 6 THE COURT: YES.

04:03PM 7 BY MR. LEACH:

04:03PM 8 Q. AND IF WE CAN ZOOM IN ON THE TOP HALF, MS. WACHS.

04:03PM 9 DO YOU SEE THE LOGO FOR THERANOS IN THE TOP LEFT CORNER,

04:04PM 10 MS. GOULD?

04:04PM 11 A. YES.

04:04PM 12 Q. IN OR AROUND THIS TIME PERIOD OCTOBER 2ND, 2014, DID YOU

04:04PM 13 DECIDE TO HAVE YOUR BLOOD DRAWN FROM THERANOS?

04:04PM 14 A. YES.

04:04PM 15 Q. AND WHY DID YOU DO THAT?

04:04PM 16 A. OUT OF CONVENIENCE.

04:04PM 17 Q. OKAY. WERE YOU ALSO ATTRACTED BY THE COST?

04:04PM 18 A. YES.

04:04PM 19 Q. WERE YOU ALSO ATTRACTED BY THE FACT THAT YOUR BLOOD WOULD

04:04PM 20 BE DRAWN BY A FINGERSTICK?

04:04PM 21 A. YES, RIGHT.

04:04PM 22 Q. AND WHERE DID YOU GET YOUR TEST?

04:04PM 23 A. INSIDE OF A WALGREENS.

04:04PM 24 Q. OKAY. AND TELL US ABOUT YOUR EXPERIENCE IN WALGREENS?

04:04PM 25 A. IT WAS UNREMARKABLE. I MEAN, THE ONLY THING I COULD

04:04PM 1 RECALL WAS THE FINGER POKE.

04:04PM 2 Q. AND DO YOU REMEMBER HOW YOU PAID FOR YOUR TEST?

04:04PM 3 A. I CAN'T RECALL.

04:04PM 4 Q. AT SOME TIME AROUND -- IF WE GO TO THE NEXT PAGE, PLEASE.

04:04PM 5 AND IF WE CAN ZOOM IN, MS. WACHS.

04:04PM 6 DO YOU SEE THE DATE OF THIS VISIT IS OCTOBER 4TH, 2014, IN

04:05PM 7 THE RIGHT CORNER, MS. GOULD?

04:05PM 8 A. YES.

04:05PM 9 Q. AND THAT'S TWO DAYS AFTER YOUR FIRST VISIT TO THERANOS?

04:05PM 10 A. CORRECT.

04:05PM 11 Q. AND SO AFTER YOUR FIRST VISIT, YOU WENT BACK FOR A SECOND

04:05PM 12 TEST?

04:05PM 13 A. CORRECT.

04:05PM 14 Q. AND WHY DID YOU DO THAT?

04:05PM 15 A. AGAIN, CONVENIENCE. NOTHING STRUCK ME AS ALARMING.

04:05PM 16 Q. OKAY. AND DID THE FACT THAT IT WOULD BE DRAWN BY A

04:05PM 17 FINGERSTICK, WAS THAT ATTRACTIVE TO YOU THEN?

04:05PM 18 A. YES.

04:05PM 19 Q. THIS REPORTS AN HCG RESULT OF 125.58.

04:05PM 20 DO YOU SEE THAT?

04:05PM 21 A. YES.

04:05PM 22 Q. IN OR AROUND THIS TIME PERIOD, OCTOBER 4TH, 2014, DID YOU

04:05PM 23 HAVE CONTACT WITH DR. ZACHMAN ABOUT THIS RESULT?

04:05PM 24 A. YES.

04:05PM 25 Q. WHAT DID SHE TELL YOU?

04:05PM 1 A. THAT MY NUMBERS WERE FALLING.

04:05PM 2 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN, THAT YOUR

04:05PM 3 NUMBERS WERE FALLING?

04:05PM 4 A. I INTERPRETED IT THAT MY BODY WAS MISCARRYING.

04:05PM 5 Q. AND DID YOU HAVE CONVERSATIONS WITH DR. ZACHMAN ABOUT

04:05PM 6 POSSIBLE MEDICAL TREATMENT ASSOCIATED WITH YOUR FALLING HCG

04:06PM 7 RESULT?

04:06PM 8 A. YES.

04:06PM 9 Q. DID DR. ZACHMAN ALSO RECOMMEND THAT YOU GET RETESTED?

04:06PM 10 A. YES.

04:06PM 11 Q. OKAY. AND DID YOU, IN FACT, GET RETESTED?

04:06PM 12 A. YES.

04:06PM 13 Q. AND WHAT DID YOU DO?

04:06PM 14 A. WE WENT TO SONORAQUEST.

04:06PM 15 Q. OKAY. LET'S LOOK AT WHAT IS IN EVIDENCE AS EXHIBIT 3305.

04:06PM 16 DO YOU SEE, MS. GOULD, THERE'S A DATE DRAWN OF

04:06PM 17 OCTOBER 6TH, 2014?

04:06PM 18 A. YES.

04:06PM 19 Q. AND DO YOU SEE YOUR NAME IN THE LEFT CORNER?

04:06PM 20 A. YES.

04:06PM 21 Q. OKAY. AND DO YOU SEE THERE'S AN HCG VALUE IN ROUGHLY THE

04:06PM 22 MIDDLE OF THE PAGE OF 9,559?

04:06PM 23 A. YES.

04:06PM 24 Q. OKAY. IN OR AROUND THIS TIME, DID YOU HAVE CONVERSATIONS

04:06PM 25 WITH DR. ZACHMAN ABOUT THIS TEST RESULT?

04:06PM 1 A. YES.

04:06PM 2 Q. AND WHY DID YOU GO TO QUEST AS OPPOSED TO THERANOS?

04:07PM 3 A. THIS LAB, I BELIEVE, WAS DRAWN IN THE OFFICE AT

04:07PM 4 DR. ZACHMAN'S.

04:07PM 5 Q. OKAY. AND DID YOU HAVE CONVERSATIONS WITH DR. ZACHMAN

04:07PM 6 ABOUT WHAT THE VALUE THAT WAS REPORTED, 9,559 MEANT?

04:07PM 7 A. YES.

04:07PM 8 Q. OKAY. AND WHAT DID SHE TELL YOU?

04:07PM 9 A. IT WAS CONFUSING. I CAN'T RECALL THE EXACT CONVERSATION,

04:07PM 10 BUT IT WAS CONFUSING.

04:07PM 11 Q. OKAY. WAS THIS MORE OPTIMISTIC IN TERMS OF HAVING A

04:07PM 12 VIABLE PREGNANCY?

04:07PM 13 A. YES.

04:07PM 14 Q. AND DID YOU MAKE THE DECISION TO GET RETESTED AFTER THIS

04:07PM 15 TEST WITH SONORAQUEST?

04:07PM 16 A. YES.

04:07PM 17 Q. LET'S LOOK AT WHAT IS IN EVIDENCE AS EXHIBIT 5411.

04:07PM 18 DO YOU SEE THE DATE DRAWN HERE IS OCTOBER 8TH, 2014?

04:07PM 19 A. YES.

04:07PM 20 Q. SO TWO DAYS AFTER THE LAST TEST THAT WE JUST SAW?

04:08PM 21 A. YES.

04:08PM 22 Q. AND THE VALUE HERE IS 17,716?

04:08PM 23 A. YES.

04:08PM 24 Q. AND WAS THIS FURTHER GOOD NEWS IN TERMS OF A VIABLE

04:08PM 25 PREGNANCY?

04:08PM 1 A. CORRECT. CORRECT.

04:08PM 2 Q. AND DID YOU ULTIMATELY GIVE BIRTH TO A GIRL?

04:08PM 3 A. I DID, YES.

04:08PM 4 Q. AFTER YOUR EXPERIENCE WITH THERANOS, DID YOU EVER GO BACK?

04:08PM 5 A. NO.

04:08PM 6 Q. WHY NOT?

04:08PM 7 A. THE INACCURACY.

04:08PM 8 Q. AFTER THIS EXPERIENCE WITH THERANOS, DID YOU EVER

04:08PM 9 RECOMMEND THAT DR. BARRY SEND PATIENTS TO THERANOS?

04:08PM 10 A. NO.

04:08PM 11 MR. LEACH: MAY I HAVE A MOMENT, YOUR HONOR?

04:08PM 12 THE COURT: YES.

04:08PM 13 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

04:08PM 14 MR. LEACH: NO FURTHER QUESTIONS FOR MS. GOULD.

04:09PM 15 THE COURT: ALL RIGHT. ANY CROSS-EXAMINATION?

04:09PM 16 MS. MCDOWELL: WE DON'T HAVE ANY QUESTIONS FOR THIS

04:09PM 17 WITNESS, YOUR HONOR.

04:09PM 18 THE COURT: ALL RIGHT. IS THIS WITNESS EXCUSED?

04:09PM 19 MR. LEACH: YES.

04:09PM 20 MS. MCDOWELL: YES.

04:09PM 21 THE COURT: ALL RIGHT. YOU'RE EXCUSED.

04:09PM 22 ALL RIGHT. THANK YOU. THE RECORD SHOULD REFLECT THAT

04:09PM 23 MS. GOULD HAS LEFT THE COURTROOM. ALL COUNSEL ARE PRESENT.

04:09PM 24 OUR JURY IS PRESENT.

04:09PM 25 LADIES AND GENTLEMEN, THANK YOU, THANK YOU VERY MUCH,

04:09PM 1 LADIES AND GENTLEMEN OF THE JURY, FOR ALLOWING ME TO GO OVER.

04:09PM 2 THE LAWYERS WERE EFFICIENT AS PROMISED AND ALLOWED THIS WITNESS

04:09PM 3 TO COMPLETE HER TESTIMONY TODAY. SO THANK YOU VERY MUCH.

04:09PM 4 DO YOU HAVE ANOTHER WITNESS TO CALL TODAY?

04:09PM 5 (LAUGHTER.)

04:09PM 6 MR. LEACH: I DON'T INTEND TO DISAPPOINT ANYBODY,

04:09PM 7 BUT, NO, NOT TODAY.

04:09PM 8 THE COURT: ALL RIGHT. THANK YOU. WE'LL TAKE OUR

04:09PM 9 WEEKEND BREAK THEN, SHALL WE?

04:09PM 10 DURING THE BREAK, PLEASE DO NOT DISCUSS ANYTHING ABOUT

04:09PM 11 THIS CASE OR IN ANY WAY TRY TO LEARN ANYTHING ABOUT IT.

04:09PM 12 THANK YOU FOR YOUR PATIENCE IN HAVING ME REPEAT THAT

04:10PM 13 QUESTION WHEN WE END EVERY DAY WITH. AND YOU KNOW THE FIRST

04:10PM 14 THING I'M GOING TO DO WHEN I ASK YOU THAT QUESTION ON TUESDAY.

04:10PM 15 I THINK TUESDAY IS OUR NEXT SESSION.

04:10PM 16 HAVE A GOOD WEEKEND. ENJOY. I THINK IT'S GOING TO BE

04:10PM 17 SUNNY THIS WEEKEND, SO ENJOY. STAY HEALTHY. AND WE'LL SEE YOU

04:10PM 18 NEXT TUESDAY. THANK YOU.

04:10PM 19 (JURY OUT AT 4:10 P.M.)

04:10PM 20 THE COURT: PLEASE BE SEATED. THANK YOU.

04:10PM 21 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT. ALL

04:10PM 22 COUNSEL, MR. BALWANI ARE PRESENT.

04:10PM 23 SO WE'LL PROCEED WITH THE GOVERNMENT'S NEXT WITNESS ON

04:11PM 24 TUESDAY I PRESUME; IS THAT RIGHT?

04:11PM 25 MR. SCHENK: YES, YOUR HONOR.

04:11PM 1 THE COURT: OKAY. GREAT. THANK YOU. HAVE A GOOD
04:11PM 2 WEEKEND. THANK YOU.
04:11PM 3 MR. COOPERSMITH: THANK YOU, YOUR HONOR.
04:11PM 4 (COURT ADJOURNED AT 4:11 P.M.)
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: MAY 13, 2022